## United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 75-1154

In The

### United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA.

Appellee,

VS.

HOWARD FINKELSTEIN, a/k/a ROBERT HOWARD, ANTHONY SCARDINO, ALAN SEGAL and EDWARD ZUBER,

Appellants.

On Appeal from the United States District Court for the Southern District of New York

#### JOINT APPENDIX

Volume I, pp. JA1 - JA300

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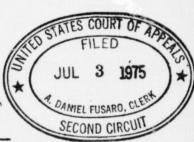
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DOCKET ENTRIES

## JUDGE MAC MAHON 74 CRIM. 908

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		TITLE OF CA	SE			ATTORNEYS	- 1				
	THE	NITED STA	TES		For U. S.:						
		John M. Wa	alker,Jr.	-AUSA.							
. BURN	EY ACTON-1,2,15,	264	+-6474								
. JOSE	PH AZZERONE-1,17	-46									
MICH	AEL CLEGG-1,2,15	,17-46									
HOWA	RD FINKELSTEIN-1	,17-46									
JACK	LEVINE-1,17-46				For Defendan	t:					
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ALAN	SEGAL-1-3,5-10,	17-46.									
. BDWA	RD ZUBER-1,17-46						**				
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ABSTRACT OF COSTS				CASH R	RECEIVED AND DISBURSED						
		AMOUNT	DATE	NAI	ME	RECEIVED	DIGBURGED				
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6:371	Consp. to commit	securiti	es frauc	(Ct.1)			1				
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	77x Fraud in the						1 2 1				
	Mail fraud. (Cts.			(Forty-six C			1.3				
DATE				PROCEEDINGS							
21. 71.	Filed indictment	_					1				
24-14	Filed indictment	<u>.                                    </u>		-			•				
25-74	McKibbon-B/W orde	ered,	Motley,J								
26-74	McKibbon-B/W iss	sued.		3							
0-7-74	Filed (4) Perso	onal Reco	gnizance	Bonds dtd.	10-7-74 and	acknowle	dged by				
	E. Aponte for the										
	Sega1\$25,000. P						*				
	Azzarone \$10,000										
	Scardino \$10,000						- 3				
5	Levine \$10.000.						1 14				

9	28 Page #2		74 CI	R 908	(LFM)
	PROCEEDINGS		CLERK	** PEES	
7/	Deft Secol(atty present) Pleade ant authority	PLAINT	IFF	DEPEN	DANT
9	Deft, Segal(atty, present) Pleads not guilty.Motions				-
	returnable in 10 days. Bail fixed by the court at				
	\$25,000. P.R.B. Bail limits extended to continental U.S. Deft. ordered photographed and fingerprinted.				
	Deft.Acton(atty, present) Defts, plead not guilty. Deft.Clegg(atty, present) Bail fixed by the court				
	Deft. Azzerone(atty. present) at \$10,000. P.R.B. as				
1	Deft. Scardino(atty. present) to these defts. Bail				
1	Deft. Levine(atty. present) limits extended to U.S.				-
	Defts, ordered photographed and fingerprinted. Case				
1					
1	assigned to Judge MacMahon for all purposes. Motions				
1	retrunable in 10 days. MacMahon, J.				
-	TOWARD DEVICE CONTRACT OF A				
14	HOWARD FINKELSTEIN= Deft, appears, (Atty Fred Neuman present)				
	Pleads NOT GUILTY. Bail fixed by Court at \$15,000. P.R.B. to be				
	posted by Tues. Oct 15. 1974 @ 12 Noon. Deft to be F/PMacMAHON, J.				1
71	EDWIADD GUDUD D. Ct.				
	EDWARD ZUBER Deft. appears (Atty Present). Deft pleads NOT GUILTY				*
	Bail fixed by the Court at \$15,000, P.R.B. to be posted by Fues				
1	Oct. 15, 1974 @ 12 Noor. Deft to be F/P -MacMAHON,J.				
72.	P.T.C. conference held. Trial set for Dec 2, 1974 - MacMahon, J.				
74	EDWARD ZUBER = Filed Notice of appearance of Atty Richard H. Kirsche				
-	10850 Wilshire Blvd, Los Angeles, Calif 90024 Tel#213-474-6555	T,			
	Total Counsel: Robert G. Morvillo, One Rockerfeller Plaza, NYC				
	Tel# 489-1577.				
7	ANTHONY SCARDION- Filed Notice of Appearance of Charles Wenden,				•
T	c/o Pappe and Mallet, Esq. Houston, Texas Local Counsel: Lyon				
1	& Erlbaum - 123-60 83rd Ave, Kew Gardens, NY Tel# 263-3235.				
4	MICHAEL CLEGG & JOSEPH AZZERONE Filed Defts acknowledgment of				
	their constitutional rights.				
	IOSEPH AZZERONE Deft, (Atty present, pleads GUILTY to Count 1.				'1
	Pre-sentence report ordered. Bail cont'dMacMAHON, J.				-

	Civil Docket Continuation	
DATE		PROCEEDINGS
10-25-74		Post, (Atty present) pleads GUILTY to Counts 1 and 2. report ordered. Bail cont'dMacMAHON, J.
10-25-74	MICHAEL CLEGO	Filed uncecured P.R.B. in the sum of \$10,000. acknowledged by the Clerk
_10-30-7/4	EDWARD ZUBER=	Filed Deft's P.R.Bunsecured- for the sum of \$15,000.00 dtd 10-17-74.
11-11-74	Filed Gov'ts	Bill of Particulars.
_11-12-74	EDWARD ZUBER=	Filed Deft's Index of Notice of Motions - 1 thru 9.
11-12-74	EDWARD ZUBER-	Filed Deft's Motion for Severance of the Trial.
11-12-74	"" "" =	Filed Deft's Motion to Introduce the results of a Polygraph Example 1
11-12-74	1111 111' =	Filed Deft's Motion for Continuance.
11=12=74		Filed Deft's Motion to Suppress Evidence.
11-12-74	"" =	Filed Deft's Motion to Disclose Electronic Surveillance & Suppretthe Evidence from such Surveillance.
11-12-74	"" "" =	Filed Deft's Motion to Suppress Evidence obtained form a Parall
		Sec Investigation.
11-12-74	1111 1111 12	Filed Deft's Motion for a Bill of Particulars.
11-12-74	"" "" =	Filed Deft's Motion to Strike Surplusage in the Indictment, and Memorandum of Points.
11-12-74	1111 1111 =	Filed Deft's Motion to Dismiss Indictment for lack of Speedy Prosecution.
11-19-74	EDWARD ZUBER=	Filed Pltff's Affdvt in opposition to the might pre-trial motions by deft.
11-20-74	EDWARD ZUBER-	Filed MEMO ENDORSEMENT on Deft's Index of Notice of Motions file 11-12-74 - See Endorsements of this date appearing of the back each motion filed herein on behalf of the Deft. Zuber -MacMAHON.
11-20-74	EDWARD ZUBER	Filed MEMO ENDORSEMENT on Defts motion for severance of the Tris
		dated 11-12-74 - Motion DENIED - SO ORDERED- MacMAHON, J.
11-20-74	EDWARD ZUBER-	Filed MEMO ENDORSEMENT ON Deft's motion to Introduce the result a polygraph examination dated 11-12-74 - Motion DENIED- SO ORDER MacMAHON, J.
11-20-74	EDWARD ZUBER-	Filed MEMO ENDORSEMENT on Deft's motion for Continuance dated 11 Motion DENIED - SO ORDERED - MacMAHON, J.
11-20-74	EDWARD ZUBER-	Filed MEMO ENDORSEMENT on Deft's motion to Surpress dated 11-12-Motion DENIED - SO ORDERED - MacMAHON, J.
11-20-74	EDWARD ZUBER=	Filed MEMO ENDORSEMENT on Deft's motion for Disclosure of Electror other surveillance, and to supress evidence dated 11-12-74.  Motion DENIED - SO ORDERED - MACMAHON, J.
11-20-74	EDWARD ZUBER=	Filed MEMO ENDORSEMENT on Deft's motion to supress evidence, Aff of Deft Zuber, and Memorandum of points, ect, dated 11-12-74. Motion DENIED - SO ORDERED - MacMAHON, I.
		(0-111 - 11)

74 CR 90H

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74 CR 900

DATE	PROCEED!NGS	Det
44 (32 (31 ) )		Juds
11-20-74 804	ARD MUBER- Filed MEMO ENDORSEMENT on Deft's motion for Bill of Particulars dated 11-12-71 - Motion DENIED - SO ORDERED - MacMAHON, J.	
_11-20-74 EDW	ARD ZUBER -Filed MEMO ENDORSEMENT on Deft's motion to strike surplusage in the indictment dated 11-12-7h - Motion DENIED - SO ORDERED -MacMAHO	Х,Ј.
_11-20-7h	ARD ZUBER Filed MEMO ENDORSEMENT on Deit's motion to dismiss indictment, dated 11-12-/4 - Motion DENIED - 30 ORDEREDMacMAHON,J.	-
	ed Pltff's Supplemental Bill of Particulars.	<del></del>
	Led Pltff's Proposed Examination of Prospective Jurors.	
	N SECAL Filed Deft's Proposed Examination of Prospective Jurors.	-
	Jurors.  ed transcript of record of proceedings, dated	
12-3-74/ Fil	ed transcript of record of proceedings, dated further 22,1974.  d transcript of record of proceedings, dated oct 14,1974.	-15
** 11-22-74 BUE	RNEY ACTON = Deft (atty present) pleads GUILTY to Counts 1 and 2. P.S.R.O. Date of Sentence 1-13-75 @ 10 AM MacMAHON, J.	
12-3-74 Tria	* SCARDINO, SEGAL & ZUBER-Trial Begun.  al continued.  al Continued.	7
12-6-74 Tria 12-9-74 Tria *	al Continued.  al Continued. Gov't Rests Motion for direct verdict of AQUITTAL of Deft  LEVINE on all COUNTS. MOTION GRANTED-MacMAHON.  TTS 20,24,25,26,27,31,35,36,38,42, & 46, are DISMISSED on consent of the	
12-10-74 Tria	armmentMacMAHON,J.  al Continued.  al Continued and Concluded. Jury deliberation starts @ 5 PM.	-
12-12-74 Jury	returns VERDICT at 4:45 PM as follows: Finds Deft FINKELSTEIN , a/k/a HOWARD, GUILTY on Counts 29 & 44. NOT GUILTY on all other COUNTS.	
	ANTHONY SCARDION= GUILTY on Counts 1,4,11,12,13,14,16,30,32 & 37. NOT GUILTY on all other Counts.	
3. A	LAN SEGAL GUILTY on all Counts 1 THROUGH 45.	
L. E	EDWARD ZUBER = CUILTY on Count #29. All other Counts NOT GUILTY.	
_ /	ALL MOTIONS TO SET-ASIDE VERDICT, DENIED.	
	CONDITIONS: t ANTHONY SCARDION= Bail fixed in the amount of \$20,000. P.R.B. and \$2,000.  Cash. To be paid by 12-13-74 at 4 PM.	
	(Cont'd on Page #5)	

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
2	BAIL CONDITIONS (cont'd):
	ALAN SEGAL Bail fixed in the amount of \$50,000, P.R.B. co-signed by Brother,
	Daniel Segal, plus \$2,500 Cash or surety deposit plus restricted
	to the District of Miami and Southern District of N.Y.
-	HOWARD WINKELSTEIN- Continued on proceed Bail
	HOWARD FINKELSTEIN- Continued on present Bail, restricted to Eastern District of N.Y., Southern District of N.Y., District of Orolando,
	Florida and Las Vagos District.
	EDWARD ZUBER= Continued on present Bail, bond to be rewritten. Deft restricted
)	to Costa Mesa and to Los Angeles and Southern District of N.Y.
2-13-74	Deft. SCARDINO application for reduction of Bail granted. Bail fixed in the
	famount of \$20,000. P.R.B., secured by \$1,000. Cash. To be paid by 12-16-71
	at 4 PM MacMAHON, J.
0 12 2	DELEG GGARRING GROWN GUREN
12-13-74	DEFTS SCARDINO, SEGAL, ZUBER and FINKELSTEIN to be sentenced on 1-28-75
	at 10 AMMACMAHON.J
2-13-74	EDWARD ZUBER= Filed Defts unsecured P.R.B. acknowledged by the Clerk, in the
	amount of \$15,000.00.
2-13-74	HOWARD FINKELSTEIN= Filed Defts unsecured P.R.B. in the amount of \$15,000.00
2-1,5-14	acknowledged by the Clerk.
	acoutowitender by min offers
12-13-74	ALAN SECALE Filed Deft's Appearance Bond in the amount of \$50,000.00 secured
	by \$2,500.00 Cash . Acknowledged by Clerk. Name of surety, Daniel
	Segal. Receipt # 44293.
2-17-74	ANTHONY SCARDINO Filed Deft's Appearance Bond in the amount of \$20,000.00
	secured by \$1,000.00 Cash. The \$1,000.00 to be deposited
	by 4:00 PM on 12-16-74. Bond acknowledged by the Clerk.
12-26-74	Filed transcript of record and detect pic 1, 3,4,5,6 1974
12-26-74	Filed transmit
1-8-75	Filed Pltff's Sentencing Memorandum
Jan : 6 : 25	Filed Pltff's Sentencing Memorandum. Filed transcript of record of proceedings, dated Nov. 11, 1979
	The state of the s
15-75	Filed letter dated 1-8-74 of U.S.A. Paul J. Curran = Enclosed is a copy of the 1
	of the 3500 material turned over to defence council during the trial in the above
	captioned case, which list the Court directed the Covernment to submit by Januar
	14. 1975. The Government requests that this letter and attached list be included
	in the record of this case. A Copy of this letter is being sent to all Counsel.
1-11-75	Filed MEMO ENDORGEMENT ON THE ABOVE LETTER DATED 1-8-/4. Application Granted.
	This letter and its attachment is hereby made part of the record in the above
	action and the Clerk of the Court is directed to make the appropriate docket entr
	and place this letter in the official file. SO ORDERED -MacMAHON.J.
	(Cont'd on Page #6)

HATE	PROCEEDINGS	Date
1-13-76	BURNEY ACTON. Filed Judgment and Probation/Commitment Order = The Deft. is hereby committed to the custody of the Atty General for a period of TWO(2) YEARS on COUNTS 1 and 2 pursuant to Section 3651 of Title 18,U.S.C. as amended, with provisions that Deft be confined in a Jail type institution for a period of three (3) MONTHS, as provided in the aforesaid section. Execution of the remainder of the sentence is suspended, and Deft. placed on Probation for a period of 21 MONTHS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Deft. to surrended to the U.S. Marshal on February 13, 1975 in the U.S. District Court of Texas.  Open COUNTS DISMISSED on motion of the Deft's counsel with the consent of the Government MacMAHON, J.	
1-13-75	MICHAEL CLEGG Filed Judgment and Probation/Commitment Order = The Deft. is hereby committed to the custody of the Atty General for a period of Two(2)	
	YEARS on each of COUNTS 1 and 2, to run concurrently with each other and with the sentence imposed on April 26, 1971 in the	
	United States District Court for the Southern District of Texas should that conviction and sentence be upheld on appeal. Deft. to surrender to the U.S. Marshal, in Dallas, Texas, on February 13,	1
	1975. Open COUNTS DISMISSED on motion of the Deft's coursel with consent of the GovernmentMacMAHON, J.	-1
1-13-75	JOSEPH AZZERONE Filed Judgment and Probation/Commitment Order = The Deft. is hereby committed to the custody of the Atty General for a period of TWO (2) YEARS, on COUNT 1. Execution of sentence is suspended and Deft placed on Probation for TWO (2) YEARS, subject to the	
64-	conditions of the standing order of Probation of this Court.— Open COUNTS DISMISSED on motion of the Deft's counsel with the consent of the Government. — MacMAHON,J.	
1-24-75	EDWARD ZUBER= Filed Deft's Motion for Judgment of Acquittal and/or motion for New Trial; Points and Authorities in Support Thereof.	
1-24-75	ALAN SEGAL Filed Afridat of John H. Doyle, III, regarding sentencing of Deft.	1
2-3-75	MICHAEL CLEEG- Filed Deft's Affdyt and Motice of Motion for reduction of Sentence-	
2-13-75	MICHAEL CLEGG Filed MEMO ENDORSEMENT on Deft's Notice of Motion for Reduction of Sentence dated 2-3-75. The within motion to modify and reduce sentence pursuant to Rule 35, Fed.R.Crim P., and for a stay of execution of sentence is in all respects MEMIED-SO ORDERED-MacMARD	a,i,
2-18-75	EDWARD ZUBER= Filed Pltff's Memorandum in opposition to Deft's post trial motion.	
2-18-75	EDWARD ZUBER= Filed Affdvt of John M. Walker, Asst. U.S. Atty, in opposition to deft's post trial motion to set aside the verdict or for a new trial.	
3-4-75	ANTHONY SCARDINO Filed Pltff's affdyt in opposition to the motion of the Deft for the Mckibbon Transcript.	
-15-75	BURNEY ACTON Filed commitmen: 2 entered return, Deft delivered to F. C. F. SEAquerille Tex	R5-
2-25-75	MICHAEL CLECG-Filed commitment & entered return, Deft. delivered to " " " "	1
it y		1 8

4 OH / D

	PROCEEDINGS
3-31-75	HOWARD FINKELSTEIN= Filed Deft's Unsecured Personal Recognizance Bond pending appeal in the sumof \$15,000.
3-31-75	ANTHONY SCARDINO= Filed Deft's Personal Recognizance Bond pending appeal in the sum of \$20,000. secured by \$1,000.
3-31-75	EDWARD ZUBER= Filed Deft's Notice of Appeal from the Judgment entered on 3-31-7 (m/n to Deft)
1-2-75	EDWARD ZUEER= Piled MEMO ENDORSEMENT on Deft's motion for Judgment of Acquistal and/or motion for a new trial, filed 1-24 75. Motion DENIED. Opinion read into
<del>}</del>	record on this date. SO ORDERED MacMAHON, J. (n/m 4-3-75)
31-75	HOWARD PINKELSTEIN = Filed Judgment & Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2) YEARS on each of COUNTS 29 and lin, the sentence to run concurrently with each other, Bail continued pending appeal MacMAHON, J.
-31-75	ANTHONY SCARDING Piled Judgment and Probation/Commitment Order - The Deft is
	hereby committed to the custody of the Atty General for imprisonment for a peri of TWO (2) YEARS on each of COUNTS 1,4,11through 14, 16, 30, 32 and 37, the sentences to run concurrently with each other, pursuant to section 3651 of Titl
	18. U.S. Code, as amended, with provisions that he be confined in a jail-type institution for a period of TWO (2) YEARS, as provided in the aforesaid section /xecution of the remainder of the sentence is suspended, and Deft. is placed on Probation for a period of TWENTY TWO MONTHS, to commence upon expiration of the
	confinement, subject to the provisions of the standing probation order of this Court. Bail continued pending appeal.—MACMAHOM, J.
31-75	ALAN SEGAL Filed Judgment & Commitment Order - The Deft is hereby committed to the custody of the Atty Gneral for imprisonment for a period of THREE (3) YEARS,
	on each of COUNTS 1 through 3, 5 through 10, 17 through 19, 21 through 23, 28 through 30, 32 through 34, 37, 39 through 41 and 43 through 45, the sentences
	to run concurrently with each other. Bail continued pending appeal - MacMAHCH, J.
3-31-75	to run concurrently with each other. Bail continued pending appeal-MacMAH(M.J.
3-31-75	EDWARD ZURER- Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TMO (2)  YEARS and SIX (6) MONTHS on COUNT 29 MacMAHON, J.
3-31-75	EDWARD ZURER- Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2)
	EDWARD ZUBER Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2) YEARS and SIX (6) MONTHS on COUNT 29 — MacMAHOW, J. Bail continued pending appeal — MacMAHOW, J.  It is Ordered that this sealed envelope be made part of the record in the above
	EDWARD ZURER- Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TMO (2)  YEARS and SIX (6) MONTHS on COUNT 29 MacMAHON, J.
3=31=75 4=75 3=75	EDWARD ZUREE Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TMO (2) YEARS and SIX (6) MONTHS on COUNT 29 —MacMAHON, J. Bail continued pending appeal—MacMAHON, J.  It is Ordered that this sealed envelope be made part of the record in the above case and placed in Vault 602 and there retained until the further order of this
u-75	EDWARD ZUREE- Filed Judgment & Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TMO (2)  YEARS and SIX (6) MONTHS on COUNT 29 — MacMAHON, J.  Bail continued pending appeal—NacMAHON, J.  It is Ordered that this sealed envelope be made part of the record in the above case and placed in Vault 602 and there retained until the further order of this Court or the Court of Appeals. SO ORDERED — MacMAHON, J.  HOWARD FINKEISTRIN- Filed Deft's Notice of Appeal to the U.S.C.A for the 2nd

INDICTMENT (Filed September 24, 1974) JAB

ULIPED STATES DISTRICT COURT SOUTHERN DISTRICT OF HEW YORK

UNITED STATES OF AMERICA

BURNEY ACTOR.

JACK LEVINE.
RICHARD MCKIBHON.
ANTHONY SCARDINO.
ALAN SEGAL,
EDWARD ZUBER,

Defendants.

11,000

25,000

10,000

INDICATOR

74 Cr. 1/7

LIM

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#### INTRODUCTION

The Grand Jury charges:

- 1. At all relevant times, Pioneer Development Corporation ("Pioneer") was a dormant corporate "shell" without substantial assets. As of January, 1969 approx imately 500,000 shares of Pioneer were outstanding and there was no active market in the stock. At no time either prior to or during the activities described herein was there filed with the United States Securities and Exchange Commission ("SEC") any registration statement with respect to any Pioneer stock issued or offered to the public.
- 2. At all relevant times, the defendants BURNEY ACTON ("ACTON") and MICHAEL CLEGG ("CLEGG") were business partners.
- 3. At all relevant times, JOSEPH AZZERONE ("AZZERONE") was the named principal of Karen & Co., a New York broker dealer.
- 4. At all relevant times, the defendants HOWARD FINKELSTEIN, a/k/a Robert Howard ("HOWARD"), JACK LEVINE ("LEVINE"), ALAN SEGAL ("SEGAL"), and EDWARD SUBER ("ZUBER") were not regularly employed.

- 6. At all relevant times, ANTHOMY SCARDINO ("SCARDINO") was employed by Foley's Department Stores, Houston, Texas.
- 7. This Introduction is hereby incorporated... and realleged in each count of this Indictment as if set forth fully therein.

#### COUNT ONE

The Grand Jury further charges:

#### I. The Conspiracy

1. From on or about August 1, 1968 up to and including December 31, 1970, in the Southern District of New York and elsewhere, the defendants ACTON, AZZERONE, CLEGG, HOWARD, LEVINE, MCKIBBON, SCARDINO, SEGAL and ZUBER and George Aaron, William Casey, Leonard Close, Michael Gardner, Michael Karfunkel, Sheldon Lamb, Eddie Levine, Don Ross, Stuart Schiffman, and Don Shepherd, named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree among each other to commit offenses against the United States as hereinafter set forth.

#### II. The Object of the Conspiracy

trol of many thousands of shares of stock, never registered with the S.E.C., in an inactive "shell" corporation, namely Pioneer, then to establish an artificial market in the stock through manipulative devices, including quotes at arbitrarily selected prices, touting, giving assurances against loss, and directing trades, and then finally to sell, pledge and distribute

N-103

this unregistered stock at artificially high prices, to JA10 purchasers and lenders in order to fraudulently obtain many hundreds of thousands of dollars at their expense.

- III. The Means by Which the Conspiracy was Carried Out
- 3. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:
- were the following:

  (a) In early 1969, ACTON would obtain control

  of the books and records of Pioneer, a dormant corporate "shell"

  without substantial assets and with approximately 500,000 un
  registered shares originally issued and outstanding.
- (b) The defendant ACTON and co-conspirators
  Aaron and Casey would collect thousands of shares of Pioneer
  from existing shareholders at little or no cost through representations to the effect that stock remaining in the hands
  of the existing shareholders would increase in value.
- (c) The defendants ACTON and CLNGG would become the "Secretary" and "President" respectively of Pioneer.
- (d) The defendants ACTON and CLEGG would give the defendant SEGAL approximately 111,000 shares of Pioneer stock, as to which there was no registration statement on file with the SEC, to enable the defendant SEGAL to create an artificial market in Pioneer and to distribute all or part of said stock to the public.
- (e) The defendant SEGAL would transport the approximately 111,000 shares of unregistered Fioneer stock obtained from ACTON and CLEGG in interstate commerce from Reno, Nevada to New York, New York to create an artificial market in Pioneer stock and to distribute all or part of this unregistered stock to the public.
- (f) The defendants ACTON and CLLGG and co-conspirators Lamb, Shepherd and Ross would arrange to place

"assets" of insubstantial value or unproven worth into Pioneer JAII some of which "assets" would be misrepresented by the defendants SEGAL and LEVINE, among others, to investors and potential investors in Pioneer as having substantial value and proven worth.

- (g) The defendants SEGAL, LEVINE, and AZZERONE would manipulate and inflate the price of Pioneer stock by artificial means, including but not limited to the following:
- (1) The defendant AZZERONE would cause Karen Co. to open trading in Pioneer at \$5 per share upon instructions relayed to him from the defendant SEGAL.
- (ii) The defendants SEGAL and LEVINE would tout and make false and misleading claims about Pioneer to investors and potential investors to create an artificial demand for Pioneer in the market and thereby cause the price to rise.
- (iii) The defendant SEGAL would cause people to purchase Pioneer through assurances, express and implied, that, if the stock went down in price he would cover the losses in order to create further demand for Pioneer in the market.
- (iv) The defendant SEGAL would direct purchases and sales of Pioneer among brokers so as to support the market in Pioneer.
- (h) The defendants SEGAL, ACTON, CLEGG,
  HOWARD, SCARDINO, MCKIBBON and ZUBER, among others, would sell,
  pledge and otherwise distribute and make use of unregistered
  Pioneer stock at artificially inflated prices for their own
  benefit and gain in the following transactions, among others:
- (i) The defendant SEGAL would sell off through a nominee account at Karen & Co. in New York 11,000 shares of unregistered Pioneer stock at prices between \$5 7/3 and \$8 1/2 per share.

(11) The defendant M.GM, would sell off through accounts at Orvis Brothers in ew York to 450 m per of unregistered Pioneer a stock at prices between \$6.172 and \$9 per share and 3000 shares of unregistered bioneer stock at prices between \$4.172 and \$6.172 per share.

(111) The defendants SCARDING and PORTAGES would sell off a total of 24 900 shares of unrestatered.

Pioneer stock through accounts at Hornblower, Meeka, Membhill & Noyes in Denver, Colorado and would distribute proceeds of these sales to defendants ACTON, CLEGG, HOWARD, SCARDING, MCKIBBON and ZUBER.

(iv) The defendants ACTON and CLEGG would sell off 1000 shares of unregistered Ploneer stock at \$6 1/2 per share through an account at Grimes Hopper and Messer in Los Angeles, California.

(v) The defendant (FGAL would cause Fell).

Jackson & Scott, his nominee corporation, to pledre 0,650

shares of unregistered Pioneer stock as collateral for a form
at the Industrial Bank and Trust Company, Everett, Improchasette.

(vi) The defendant CEGM, would cause cell!

Jackson & Scott, his nominee corporation, to pleake 2,000

shares of unregistered Pioneer stock as collateral for a loan
at the Guarantee Trust Co., Waltham, Massachusetts.

(vii) The defendant SECAL would deliver 2000 shares of unregistered Pioneer stock to Zachery Swidler to pledge as collateral at the First Israeli Bank & Trust Company in New York City for a \$10,000 loan of which \$5,000 would go to the defendant SECAL.

(viii) The defendant HOTARD would sell off 10,000 shares of unregistered Pioneer stock to co conspicutor Michael Karfunkel at \$1 1/2 per share the proceeds of which would be distributed to ACTOH. CLEGG and HOTARD.

(ix) The defendants ACTRL NOWARD and ZUBER would trade off of 6900 shares of unregistered Pioneer

- (i) The defendant ZUBER, representing the defendant SEGAL, would use threats of violence to recover compensation for the unregistered stock which had been sold into the market by the defendants SCARDINO and MCKIBBON through Hornblower, Weeks Hemphill & Noyes in Denver, ... Colorado.

  IV. Overt Acts
- 4. In furtherance of the said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts in the Southern District of New York and elsewhere:
- (1) In or about October 24, 1969, the defendant SEGAL transported approximately 111,000 shares of Pioneer stock to New York, New York.
- (2) On or about October 28, 1959, the defendant AZZERONE signed an application form with the National Quotation Bureau ("Pink Sheets") to quote Pioneer at \$5 bid and \$6 asked.
- (3) On or about October 31, 1969, the defendant SEGAL caused 20,000 shares of Pioneer stock to be delivered to Orvis Brothers & Co., New York, New York for sale.
- (4) On or about November 7, 1959, the defendant SCARDINO flew to Tucson, Arizona with a stock certificate.
- (5) On or about November 10, 1969, the defendant MCKIBBON flew to Denver, Colorado with a stock certificate.
- (6) On or about Movember 18, 1969, the defendants SCARDINO and MCKIBBON went to a broker in Denver, Colorado to pick up proceeds of a sale of Pioneer stock.
- (7) On or about December 10, 1969, the defendant MCKIBBON delivered 18,000 shares of Pioneer stock to a broker in Denver, Colorado for sale.

- (8) In or about December 1969, the defendant LEVINE made false and misleading statements in connection with Pioneer in New York, New York.
- (9) In or about the end of December, 1969 or early January, 1970, the defendant CLEGG in Los Angeles, California had a long distance telephone conversation with the defendant SEGAL in New York, New York.
- (10) In or about the end of December, 1969 or early January, 1970, the defendants ACTON, HOWARD, MCKIBBON, SCARDINO and ZUBER met at the Holiday Inn in Reno, Nevada.
- (11) On or about January 10, 1970, the defendants ACTON, HOWARD and ZUBER delivered 6900 shares of Pioneer stock to Allen Grant in New York, New York.
- (12) On or about February 24, 1970, the defendant HOWARD delivered 10,000 shares of Pioneer stock to Michael Karfunkel in New York, New York.

Each of the mailings and interstate wire communications alleged in Count 5 through 46 of this indictment are repeated and realleged herein as overt acts.

#### V. Statutory Allegations

- 5. The defendants and their co-conspirators, as part of the conspiracy previously alleged herein agreed to engage in conduct in violation of criminal statutes of the United States, as follows:
- (1) To unlawfully, wilfully and knowingly, directly and indirectly, (a) make use of means and instruments of transportation and communication in interstate commerce and of the mails to sell and would carry and cause to be carried

through the mails and in interstate commerce and by means and instruments of transportation for the purpose of sale and for delivery after sale, securities, namely Pioneer stock, at a time when no registration statement was in effect with the United States Securities and Exchange Commission, in violation of Title 15, United States Code, Sections 77e(a) and 77x.

- the offer and sale of securities, namely Pioneer stock, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly. (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made not misleading; and (c) engage in transactions, practices and courses of business which would operate as a fraud and descrit upon the purchasers and holders as collateral of Pioneer stock in violation of Title 15, Unite. States Code, Sections 77q(a) and 77X.
- (3) To unlawfully, wilfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of the stock of Pioneer in contravention of Rule 10b-5 (17 CPR Section 240.10b-5), a rule prescribed by the SEC as necessary and appropriate in the public interest and for the protection of investors in violation of Title 15, United States Code Sections 78j(b) and 78ff.
- (4) Having devised and intending to devise a scheme and artifice to defraud purchasers and holders as collateral of Pioneer stock, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, to unlawfully, wilfully and knowingly and for

the purpose of executing said scheme and aritifice and attempting so to do, to cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Post Office Department in violation of Title 18, United States Code, Section 1341.

(Title 18, United States Code, Section 371.)

#### COUNT TWO

The Grand Jury further charges:

1

On or about the last week in October, 1969, in the Southern District of New York and elsewhere, the defendants ACTON. CLFGG and SEGAL, unlawfully, wilfully and knowingly, directly and indirectly, by means and instruments of transportation, did carry and cause to be carried in interstate commerce and through the mails, securities, namely approximately 111,000 shares of Pioneer stock, for the purpose of sale no registration statement as to such securities being in effect with the United States Securities and Exchange Commission.

(Title 15, United States Code, Sections 77e(a)(2) and 77x: Title 18, United States Code, Section 2.)

#### COUNT THREE

The Grand Jury further charges:

In or about November and December of 1969 in the Southern District of New York and elsewhere, the defendant SEGAL, unlawfully, wilfully and knowingly, directly and indirectly, by means and instruments of transportation, did carry and cause to be carried through the mails and in interstate in commerce, between the Nevada Agency and Trust, Pioneer's transfer agent in Reno, Nevada and Orvis Brothers, a broker in New York, New York, securities, namely approximately 20,000 shares of Pioneer stock, for the purpose of sale and delivery after sale, no registration statement as

to such securities being in effect with the United States Securities and Exchange Commission.

(Title 15, United States Code, Sections 77e(a)(2) and 77x; Title 18, United States Code, Section 2).

#### COUNT FOUR

The Grand Jury further charges:

On or about January 15, 1970 in the Southern.

District of New York and elsewhere, the defendants SCARDINO and MCKIBBON, unlawfully, wilfully and knowingly, directly and indirectly, by means and instruments of transportation, did carry and cause to be carried through the mails and in interstate commerce, to First Philadelphia Corporation, a broker in New York, New York, securities, namely approximately 2300 shares, of Pioneer stock, for the purpose of sale and delivery after sale, no registration statement as to such securities being in effect with the United States Securities and Exchange Commission.

(Title 15, United States Code, Sections 77e(a)(2) and 77x; Title 18, United States Code, Section 2).

#### COUNTS FIVE THROUGH SIXTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, the defendants hereinafter set forth in Counts 5 through 16, unlawfully, wilfully and knowingly, directly and indirectly, made use of means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, namely Pioneer stock, as hereinafter set forth, no registration statement as to such securities being in effect with the United States Securities and Exchange Commission:

INW, JR:nc

COUNT	DEFENDANTS	DATE	NUMBER OF SHARES	EVENT
5	SEGAL	10/30/69	1000	confirmation mailed to Francine Zahl from Karen Company
6	SEGAL	10/30/69	1500	confirmation mailed to Francine Zahl from Karen Company
7	SEGAL	10/30/69	1000	confirmation mailed to Francine Zahl from Karen Company
8	SEGAL	10/31/69	1300	confirmation mailed from First Philadelphia Corp. to Orvis Brothers
9	SEGAL	10/31/60	2000	confirmation mailed to Francine Zahl from Karen Company
10	SEGAL	11/7/69	1000	confirmation mailed to Francine Zahl from Karen Company
11	SCARDINO MCKIBBON	11/7/69	400	confirmation mailed to Karen & Co. from Hornblower Weeks Hemphill & Noyes
12	SCARDINO MCKIBBON	11/7/69	5000	wire communication between Denver, Colorado and New York, N.Y.
13	SCARDINO MCKIBBON	11/11/69	6000	wire communication between Denver, Colorado and New York, New York
14	SCARDINO MCKIBBON	11/19/69	2 <b>3</b> 00	confirmation mailed to First Philadelphia Corp. from Hornblower Weeks- Hemphill & Noys.
15	ACTON CLEGG	12/3/69	1000	confirmation mailed to Mayer & Schweitzer from Grimes Hooper & Messer
16	SCARDINO MCKIBBON	12/15/69	13,900	wire communication between Denver Colorado and New York, New York

(Title 15, United States Code, Sections 77e(a)(1) and 77x; Title 18, United States Code, Section 2).

The Grand Jury further charges:

- 1. On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, the defendants ACTON, AZZERONE, CLEGG, HOWARD, LEVINE, McKIBBON, SCARDINO, SEGAL and ZUBER unlawfully, wilfully and knowingly, directly and indirectly, in the offer and sale of securities, to wit, Pioneer stock, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, (a) did employ devices, schemes and artifices to defaud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the cirmumstances under which they were made, not misleading; and (c) did engage in transactions, practice and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities.
- 2. The allegations contained in paragraph 3 of Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants committed the offenses charged in paragraph 1 of these counts.
- 3. On or about the dates hereinafter set forth in Counts 17 through 29, in the Southern District of New York and elsewhere the defendants ACTON, AZZERONE, CLEGG, HOWARD, LEVINE, McKIBBON, SCARDINO, SEGAL and ZUBER unlawfully, wilfully and knowingly, directly and indirectly, did use and cause to be used means and instruments of transportation and communication in interstate commerce and the mails

pursuant to and in furtherance of the offenses alleged in paragraph 1 of these counts in connection with sales of Pioneer stock to purchasers as set forth below:

Count	Date	Purchaser	Amount
17	10/30/69	Abner Berman	1,000
18	10/31/69	Robert Meyer	1,200
19	10/31/69	Sol Finger	2,000
20	11/3/69	Joseph Weisman	1,000
21	11/6/69	Don Aymes	1,000
22	11/10/69	Don Aymes	1,000
23	11/11/69	Howard Neremberg	500
24	11/17/69	Hyman Friedman	1,500
25	11/17/69	Don Aymes	2,000
26	11/18/69	Stanley Schleger	1,000
27	12/15/69	Irving Smith	2,000
28	12/31/69	Robert Meyer	100
29	1/10/70	Allen Grant	6,900

(Title 15, United States Code, Sections 77q and 77x; Title 18, United States Code, Section 2.)

#### COUNTS THIRTY THROUGH FORTY-SIX

The Grand Jury further charges:

1. On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, the defendants ACTON, AZZERONE, CLEGG, HOWARD, LEVINE, McKIBBON, SCARDINO, SEGAL and ZUBER, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud purchasers of the stock of Pioneer and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories

- 2. The allegations contained in paragraph 3 of Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants committed the offenses charged in paragraph one of these counts.
- 3. On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, the defendants ACTON, AZZERONE, CLEGG, HOWARD, LEVINE, McKIBBON, SCARDINO, SEGAL and ZUBER, unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail, according to the directions thereon, to the persons hereinafter set forth, certain mail matter, to wit, confirmations, comparisons of purchases and sales of Pioneer stock, and letters.

COUNT	DATE	PERSON TO WHOM MAILED
30	10/24/69	Nevada Agency & Trust Company 2 Ryland Street Reno, Nevada Att: Mr. Dwayne Niggi
31	10/24/69	Mr. Michael Clegg 29131 Cliffside Drive Malibu, California 90265
32	10/29/69	Nevada Agency and Trust Company 2 Ryland Street Reno, Nevada 89501 Mr. Dwain Kniggi
33	10/31/69	First Philade lphia Corp. 80 Wall Street New York, New York
34	10/31/69	Mr. Robert B. Meyer c/o Fashion Novelty Corp. 20 Universal Mace Carlstadt Novelty 07002

		UNZZ
35	10/31/69	Karen Co. 2 John St. New York, N.Y. 10038
36	11/3/69	Newberger Loeb & Co. 5 Hanover Sq. New York, H.Y. 10004
37	11/7/69	Karen & Co. 2 John Street New York, N.Y. 10038
38	11/18/69	M.J. Manchester & Co., Inc 701 Seventh Ave. New York, New York 10036
39	11/24/69	First Philadelphia Corp. 30 Broad Street New York, New York 10004
40	11/26/69	Jeff Howard 150 E. 61st St. New York, New York
41	12/1/69	Jeff Howard 150 E. 61st St. New York, New York
42	12/3/69	Grimes Hooper & Hesser 1 Wilshire Elvd. Los Angeles, Calif. 90014
43	12/31/69	Mr. Robert B. Meyer c/o Fashion Novelty Corp. 20 Universal Place Carlstadt, N.J. 07002
44	2/2/70	Economic Planning Corp. 122 E. 42nd Street New York, N. Y.
45	3/11/70	Mr. Robert B. Meyer c/o Fashion Hovelty Corp. 20 Universal Place Carlstadt, N.J. 07002
46	3/25/70	Irving Smith c/o Zion Memorial Chapel 41 Canal Street New York, New York
	<ul> <li>*** *** *** *** *** *** *** *** *** **</li></ul>	

(Title 15, United States Code, Section 1341: Title 18. United States Code, Section 2.)

## MOTION: BY DEFENDANT EDWARD ZUBER TO STRIKE SURPLUSAGE IN THE INDICTMENT AND MEMORANDUM OF POINTS IN SUPPORT THEREOF (Filed November 12, 1974)

KIRSCHNER & GREENBERG
FOURTH FLOOR AVEO CENTER
10350 WILSHIPE BOULEVARD
LOS ANGELES, CALIFORNIA 90024
(213) 474-6555 • 879-5800

Attorneys for Defenlant EDWARD ZUBER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

No. 74 CR. 908 (LM)

Plaintiff,
vs.

MOTION TO STRIKE SURPLUSAGE IN THE INDICTMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

EDWARD ZUBER, et al.,

Defendants.

Defendant EDWARD ZUBER respectfully moves this Court, pursuant to Rule 7(d), Federal Rules of Criminal Procedure, to strike as surplusage from the indictment the following matter:

- (1) That portion of Paragraph 4 alleging that, "At all relevant times, the defendants . . . EDWARD ZUBER-("ZUBER") were not regularly employed."
- "The defendant ZUBER, representing the defendant SEGAL, would use threats of violence to recover compensation for the unregistered stock which had been sold into the market by the defendants SCARDINO and MCKIBBON through Hornblower, Weeks-Hemphill & Noyes in Denver, Colorado."

Said motion is based upon the files and records of the case and the attached Memorandum of Points and Authorities

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DATED: November 8, 1974.

Respectfully submitted,

KIRSCHNER & GREENBERG

By:

RICHARD H. KIRSCHNER, Attorney for Defendant EDWARD ZUBER

## A. REGULAR EMPLOYMENT OF MOTION TO STRIKE SURPLUSAGE

An indictment must be a "plain, concise . . ." statement of the essential facts constituting the offense charged. Rule 7 (c)(1), Federal Rules of Criminal Procedure. In spite of that directive, Prosecutors have been known to insert unnecessary allegations for color or background, with the hope that such gratuitous allegations will stimulate the interest of the jury, and/or prejudice the defendant in the eyes of the jury. 1 Wright, Federal Practice and Procedure, p. 277.

For example, prosecutors have a frequent tendency to play on names by alleging numerous aliases or "aka's". This practice has uniformly been ruled to be prejudicial unless relevant to identifying the defendant. United States v. Wilkerson, 456 F. 2d 57 (6th Cir. 1972), cert. den. 408 U.S. 926; United States v. Monroe, 164 F.2d 471, 476 (2d Cir. 1947), cert den 33 U.S.828 (1947); United States v. Moore, 164 F.2d 472 (2d Cir. 1947); United States v. Curry, 278 F. Supp. 508 (D.C. III. 1967); United States v. Helwig, 7 F.R.D. 187 (D.C. Pa. 1947).

The reason is simple. Unless the listing of numerous aliases is relevant to identifying the Defendant, or part of the charges alleged, it can only prejudice the defendant through the implication that he has something to hide or is a "bad man" because of his use of more than one name. Wright, supra.

Similarly, an allegation that a given defendant may or may not be regularly employed must be stricken unless it bears some relevance to identifying the defendant or is a part of the scheme alleged. Wilkerson, supra. The indictment in this case charges a securities scheme by which numerous alleged defendants purportedly gained control of an "inactive" shell corporation, established an artificial market for the stock, and disposed of stock in a

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1.

variety of means in order to profit thereby. Whether one or more of the defendants was or was not regularly employed during the time those events allegedly took place bears no more relationship to the charges than one's date of birth, or the amount of one's pocket change at a given time. A careful reading of the indictment shows that such an allegation is neither relevant to identifying the defendant, nor is it conceivably part of the scheme alleged. It's only possible function is to prejudice the defendant in the eyes of the jury with the connotation that he was not "gainfully" employed.

A motion to strike such surplusage should be granted if:

- (1) It is clear that the allegations are not relevant to the charges; or
- (2) If the allegations are inflammatory and prejudicial. Dranow v. United States, 307 F.2d 545, 558 (8th Cir. 1962); United States v. Archer, 355 F. Supp. 981, 989 (S.D.N.Y. 1972); United States v. Ahmad, 329 F. Supp. 292, 297 (M.D. Pa. 1971). In the instant case, both elements are clearly present. The allegation that Mr. Zuber was not regularly employed bears no relevance to the charges, and it is inflammatory and prejudicial in nature. Accordingly, the appropriate remedy is to strike that surplusage. Dranow, supra; Wilkerson, supra.

#### B. THREATS OF VIOLENCE

The first count of indictment sets forth in precise language a scheme by which the defendants allegedly perpetrated a securities fraud. The "Objects" are clearly set forth as a plan to secure control of shares of stock in an inactive corporation, artificially create a market and inflate the price of the stock, and then dispose of the stock in a variety of means to make a profit. (See Section II of Count I). The "Means" by which the "Object" of the conspiracy was to be accomplished logically follow.

KIRSCHNER & GREENBERG FOURTH FLOOR ANCO CENTER 10850 WILSHIRE BOULEVARD LOS ANGELES, CALIFORNIA 90024 7

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The indictment alleges the specific means by which the defendants allegedly were to obtain control of the corporation, collect the outstanding shares of stock, artificially create a market and inflate the price, and proceed to sell, pledge, and otherwise dispose of the stock (See Section III of Count I). The Indictment is noteworthy for its clarity and specificity in describing the operation of the alleged scheme, in this respect.

However, the very last paragraph of Section III of Count I alleges that Mr. Zuber, through threat of violence, was to recover compensation on behalf of one co-defendant (Segal) from other co-defendants (Scardino and McKibbon). This allegation is pure surplusage and highly prejudicial. It is completely out of context from the numerous preceding paragraphs setting forth the means by which the object of the conspiracy was to be accomplished. Perhaps the reason for this is that it lears absolutely no relationship to the preceding allegations of either the objects of the conspiracy or the means by which the object was to be carried out. While the scheme alleges a plan whereby the defendants were to victimize people and companies other than themselves, the allegation in question charges some sort of dispute between the alleged co-conspirators. As such, it is far beyond the scope of the object of the conspiracy or the means by which it was to be carried out. This gratuitous allegation serves no purpose but to prejudice the jury against Mr. Zuber.

Consequently, it is objectionable for at least three reasons. First, it is mere surplusage. Second, while it might arguably be "logically" relevant to the charges, it is beyond the scope of the indictment and unnecessary to prove the charges. As such it is highly prejudicial and inflammatory. Third, it alleges the crimes of assault, robbery and possibly extortion, crimes with which Mr. Zuber is not charged in the indictment.

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While surplusage may be retained in an indictment if it 1 is relevant and not inflammatory or prejudicial, United States v. 2 Pilnick, 267 F. Supp. 791 (D.C.N.Y. 1967), such is not the case 3 where the surplusage is both prejudicial and charges another crime as well. In United States v. Saporta, 270 F. Supp. 183 (D.C.N.Y. 1967), the indictment charged a securities fraud. The indictment included an additional allegation of unlawful pledge of stock. As in the instant case, the surplus allegations alleged an uncharged crime and were highly prejudicial. Accordingly, the surplusage was ordered stricken. Similarly, prejudicial allegation beyond the scope of the crimes charged in the indictment in United States v. Bonanno, 177 F. Supp. 106 (D.C.N.Y. 1959), reversed on other grounds, 285 F. 2d 408 (2d Cir. 1960), were ordered stricken for the same reasons. The teachings of Saporta and Bonanno are clear: Where the prosecution gratuitously alleges matters that are not relevant to the scope of the charges, allege additional uncharged crimes, and are prejudicial, that surplusage must be stricken.

Those teachings are especially apt in the instant case. The surplusage bears no meaningful relationship to the charges, it alleges an uncharged crime, and it is highly prejudicial and inflammatory. Consequently, it must be stricken. Saporta, supra; Bonanno, supra.

#### CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the aforesaid passages be ordered stricken.

Respectfully submitted,

KIRSCHNER & GREENBERG

By:

Attorney for Defendant

FOR LACK OF SPEEDY PROSECUTION AND MEMORANDUM
OF POINTS IN SUPPORT THEREOF ((Filed November 12, 1974)

KIRSCHNER & GREENBERG
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(213) 474-6555 \* 879-5800

Attorneys for Defendant

EDWARD ZUBER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

VS.

EDWARD ZUBER, et al.,

Defendants.

No. 74 CR. 908 (LM)

MOTION TO DISMISS INDICTMENT FOR LACK OF SPEEDY PROSECUTION; AFFIDAVITS OF EDWARD ZUBER AND RICHARD H. KIRSCHNER AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Defendant EDWARD ZUBER moves this Court, pursuant to Rule 48(b) of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments to the United States Constitution for an Order dismissing the indictment against the defendant in the above entitled action for lack of speedy prosecution with respect thereto. Said motion is based upon the attached affidavits of EDWARD ZUBER, RICHARD H. KIRSCHNER, and Memorandum of Points and Authorities in Support thereof, and the files and records of the case.

DATED: November 8, 1974

Respectfully submitted,

KIRSCHNER & GREENBERG

By: / / Charl M. / /

Attorneys for Defendant

EDWARD ZUBER

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## IN SUPPORT OF THE MOTION TO DISMISS

### FOR LACK OF SPEEDY PROSECUTION

## INTRODUCTION

According to the allegations in the indictment, this case began on August 1, 1968 and ended on December 31, 1970.

Thereafter, on October 14, 1971, Mr. Zuber was interviewed by investigators for the S. E. C. Not until nearly three years later, on or about September 25, 1974, was an indictment returned.

Mr. Zuber was at all times in the interim available for prosecution by the Government, and his whereabouts were at all times known by the Government. Furthermore, Mr. Zuber was not represented by an attorney at that time, and continued unrepresented until he retained this firm to represent him on or about September 25, 1974.

II

# RULE 48 (b), FEDERAL RULES OF CRIMINAL PROCEDURE, REQUIRES THE DISMISSAL OF THE INDICTMENT.

Rule 48 (b), authorizing dismissal for unnecessary delay, is a vehicle for enforcing the Sixth Amendment right to a speedy trial, Pollard v. United States, 352 U.S. 354 (1957), but it is far more than that. It is a restatement of the inherent power of the Court to dismiss a case for want of prosecution.

Mann v. United States, 304 F.2d 394 (D.C. Cir. 1962) cert den. 371 U.S. 896 (1962). That power of the Court is not circumscribed by the Sixth Amendment. Mann, supra. This Court can dismiss whenever there has been unnecessary delay without first being required to decide whether the delay was of such a nature as to deprive the defendant of any Constitutional right. Mann, supra, United States v. Research Foundation, Inc., 155 F. Supp. 650, 654 (D.C.N.Y.1957).

The "unnecessary" delay recited in Rule 48 (b), applies not merely to delay caused by conscious or purposeful efforts to oppress and harass a defendant. It applies as well to a delay caused by negligence or inadvertence. Hanrahan v. United States, 348 F.2d 363, 368 (D.C. Cir. 1965). As Justice Brennan said, concurring in Dickey v. Florida, 398 U.S. 30 (1970), at page 51:

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"When is Government delay reasonable? Clearly a deliberate attempt by the Government to use delay to harm the accused, or a Government delay that is purposeful or oppressive is unjustifiable. (Citations omitted). The same may be true of any government delay that is unnecessary, whether intentional or negligent. (Citations omitted)." (Emphasis added).

A dismissal under Rule 48 (b) is reviewable on appeal, 18 U.S.C. Section 3731. However, an appellate court will reverse only on a showing of abuse of discretion. York v. United States, 389 F.2d 761, 762 (9th Cir. 1968), Nickens v. United States, 323 F. 2d 808 (D.C. Cir. 1963) cert den. 379 U.S. 905 (1963).

involves proper investigation of the case and police activities.

Such a delay is not "unnecessary" within the meaning of Rule 48 (b).

See, for example, United States v. Vargas, 336 F. Supp. 1075

(D.C. Puerto Rico 1971); United States v. Brown, 188 F. Supp. 624

(D.C.N.Y. 1960); Harlow v. United States, 301 F. 2d 361 (5th Cir. 1962), cert den. 371 U.S. 814; Flemming v. United States, 378 F.2d 502 (1st Cir. 1967). However, it is difficult to contemplate what possible "necessary" police activity could have justified this inordinately long delay of nearly four (4) years from the date the conspiracy terminated until the return of the indictment.

Federal officers interviewed Mr. Zuber nearly three (3) years prior to the indictment, so the government was presumably aware of the

alleged offense prior to that interview of October 14, 1971 JA32
Similar delays have been conclusively found to be such unnecessary
delays as to require dismissal under the Court's discretionary
authority. United States v. Blanca Perez, 310 F. Supp. 550 (D.C.
N.Y. 1970) (4 years); United States v. Mark II Electronics, 283 F.
Supp. 280 (D.C.La. 1968) (34 months).

mately four (4) years has passed from the termination of the alleged conspiracy. It further appears that a period of approximately three (3) years has passed from the date that Mr. Zuber was interviewed by Federal officers. None of the delay was in any way attributable either to Mr. Zuber or to any of his co-defendants No apparent reason exists for the delay that would justify it on behalf of the prosecution. In short, it appears that the prosecution has done nothing but sit on its hands for the better part of four (4) years. The effective administration of justice requires far more. Accordingly, it is respectfully urged that this Court exercise its discretionary authority and dismiss the indictment in the instant case for unnecessary delay in presenting the charge to the Grand Jury. Rule 48 (b), FR Cr P.

III

THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE DISMISSAL OF THE INDICTMENT.

#### A. Introduction.

"The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality and the need to have charges promptly exposed. If the case for the prosecution calls on the accused to meet charges rather than rest on the infirmities of the prosecution's case, as is the defendant's right, the time to meet them is

when the case is fresh. Stale claims have never JA33 been favored by the law and far less so in criminal cases." Dickey v. Florida, supra, at 37.

"... The evils at which the clause (Speedy Trial clause of the Sixth Amendment) is directed are readily identified. It is intended to spare an accused those penalties and disabilities—incompatible with the presumption of innocence—that may spring from delay in the criminal process." Id. at 41.

"These disabilities, singly or in league, can impair the accused's ability to mount a defense. The passage of time by itself, moreover, may dangerously reduce his capacity to counter the prosecution's charges. Witnesses and physical evidence may be lost; the defendant may be unable to obtain witnesses and physical evidence yet available. His own memory and the memories of his witnesses may fade . . ." Id. at 42.

#### B. Remedy.

The Speedy Trial right granted by the Sixth Amendment to the Constitution has taken its place among the most fundamental of our rights. Consequently, the appropriate remedy for a speedy trial violation is dismissal of all charges. Strunk v. United States, 412 U.S. 434 (1974).

## C. When the Speedy Trial Right Attaches.

Although it is clear from <u>United States</u> v.

Marion, 404 U.S. 307 (1971) that the Speedy Trial
right under the Sixth Amendment runs only from the
time an accused formally becomes an "accused," the
right begins earlier when joined with one's due

process rights under the Fifth Amendment. There is no longer any doubt that a speedy trial claim may require reversal where there has been undue delay between the offense and arrest or indictment.

Dickey, supra, at 46; Woody v. United States, 370

F. 2d 214 (D.C.Cir. 1966); Ross v. United States, 349 F. 2d 210 (D.C.Cir. 1965).

#### D. Factors to Consider.

The Supreme Court, in <u>Barker v. Wingo</u>, 407 U.S.

514 (1972), set forth four factors to consider in

determining whether to grant a motion to dismiss

based on want of speedy prosecution. They are:

1) Length of delay; 2) Reason for delay; 3) Defendant's

assertion of the right to a speedy trial; and

4) Prejudice to Defendant.

#### (1) Length of Delay

If there is delay both before and after the indictment, the extent of, and the necessity for the pre-indictment delay is relevant in determining whether dismissal is required because of delay following the indictment. Sanchez v. United States, 341 F.2d 225, 228 n. 3 (9th Cir. 1965), cert den. 382 U.S. 856 (1965). The great bulk of the delay in the instant case took place prior to the indictment. An extraordinarily long period expired in which the case appeared to be in limbo; that is, nothing happened. It was precisely such undue delay of a nearly identical time that required the Court in Blanca Perez, supra, to dismiss the indictment. There the government

deraulted by failing to bring the JA35
Defendant to trial from January 1966
to February 1970.

A delay of such length, when unexcused, is prima facie prejudicial, the Defendant need not show any more particularized prejudice beyond faded memory. Blanca Perez, supra, at 551. Furthermore, once the prima facie prejudice is shown, the burden shifts to the government to show that the Defendant has not been prejudiced by the delay. Blanca Perez, supra at 551; United States ex rel. Solomon v. Mancusi, 412 F.2d 88, 91 (2d Cir. 1969).

Perez are analogous to those in the instant case. First, the time lapse in both cases is approximately the same: 4 years. Second, Blanca Perez like Mr. Zuber, alleged that his memory had dimmed in the lapse of time, and that he would experience great difficulty in locating witnesses and documents, if any actually remained. Mr. Zuber faces the identical problem that Mr. Blanca Perez did, only Mr. Zuber's are compounded because his witnesses and documents are scattered across the continent.

After carefully scrutinizing the facts, the <u>Blanca Perez</u> court simply found and held that the Government may not merely sit on its hands for this period of time and expect that conduct to survive a Constitutional

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challenge. It is respectfully submitted JA36 that the same result should be reached in the case sub judice.

#### (2) Reason for Delay.

This is a difficult factor to address from a defense viewpoint. Not being privy to Government files, it is difficult to comprehend what possible reasons there could be for the lengthy delay in this case. As noted earlier, Government agents were involed in the case at least as early as October, 1971, and should have had more than sufficient time to investigate the case and prepare it for trial. The difficulty in addressing this issue was probably at least partially the reason for Justice Brennan suggesting that the Government should hear the burden of justifying unnecessary delay:

> "Thus it may be that an accused makes out a prima facie case of denial of a speedy trial by showing that his prosecution was delayed beyond the point at which a probability of prejudica arose and that he was not responsible for the delay, and by alleging that the Government might reasonably have avoided it. Arguably, the burden should then shift to the Government to establish, if possible, that the delay was necessary by showing that the reason for it was of sufficient importance to justify the time lost."

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JA37 Clearly, Mr. Zuber was in no way responsible for this delay. Equally clear, the Government might reasonably have avoided it by simply acting with more dispatch in an area where Constitutional rights are at stake. Having failed to do so, the burden must now shift and the Government must explain, if possible, the necessity for the delay; that is, the Government must establish that the reason for the delay was of sufficient importance to justify the time lost. Dickey, supra; Blanca Perez, supra; Mancusi, supra.

Defendant's Assertion of the Right. (3)

The first thing that should be noted about this factor is that the other three factors outweigh by far a defense counsel's understandable reluctance to move to secure his client's Constitutional right to a speedy trial. United States v. Blanca Perez, supra. As noted by Professor Wright, in his work, at Volume 3 of Federal Practice and Procedure, at page 317, it has been cogently argued that a lack of demand for a speedy trial is, by itself, not even a proper factor to consider in determining to grant a motion for want of speedy prosecution. (See cases discussed therein.) (Emphasis added.)

Secondly, equating silence or the failure to request a prompt trial with waiver of one's speedy trial right is a fiction that has been categorically rejected by the Supreme Count

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when such fundamental rights are at stake.

Over 30 years ago in Johnson v. Zerbst, 304

U.S. (458 (1938) the Supreme Court defined

"waiver" as an "intentional relinquishment or
abandonment of a known right or privilege."

The Supreme Court has made it clear that

Courts should "indulge every reasonable

presumption against waiver," Aetna Insurance

Company v. Kennedy, 301 U.S. 389 (1937), and
that they should "not presume acquiescense in
the loss of fundamental rights." Ohio Bell

Telephone Company v. Public Utilities

Commission, 301 U.S. 292 (1937).

Third, in order to find that the Defendant in this case in some fashion "waived" his right to a speedy trial, such a waiver must be inferred from his silence or inaction. The inference in turn, must flow from a presumption that a potential Defendant is (1) aware of pending charges; and (2) aware that he has a right to a speedy trial. Consequently, the government must show that the Defendant is aware of his right to a speedy trial United States v. Dyson, 469 F.2d 735 (5th Cir. 1972).

Assuming that a potential Defendant is aware of his speedy trial right, it is hardly realistic to expect him to press to be prosecuted under penalty of waiving his right to a speedy trial if he fails to do so. A potential defendant is hardly likely—or presumptious enough—to impose himself in the

midst of the prosecutor's decision-making role. He is even less likely to do so when unrepresented by an attorney, and unaware of his speedy trial rights.

More importantly, the implication of waiver from silence or inaction completely misallocates the burden of insuring a speedy trial. He is presumed to be innocent until proven guilty. Arguably, he should be presumed to wish to exercise his right to be tried quickly, unless he affirmatively and positively accepts a delay for some reason that will act to his advantage. On the other hand, the Government has the responsibility to move ahead with the prosecution, both out of fairness to the accused and to protect the community interest in a speedy trial. Smith v. Hooey, 393 U.S. 374 (1969); Dickey, supra at 40. This specific issue was most articulately addressed by Judge Weinfeld of the District Court for the Southern District of New York: do not conceive it to be the

duty of a defendant to press that he be prosecuted upon an indictment under penalty of waiving his right to a speedy trial if he fails to do so. It is the duty of the public prosecutor, not only to prosecute those charged with crime, but also to observe the Constitutional mandate guaranteeing a speedy trial. If a prosecutor fails to do so, the

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defendant cannot be held to have waived his Constitutional right to a speedy trial." United States v. Dillon, 183
F. Supp. 541, 543 (1960).

Finally, it should be noted that even if one wanted to, a defendant cannot force the beginning of his trial, even if he attempted to take affirmative steps toward that end. The Government, on the other hand, can and does cause the case to be set for trial. Thus Constitutional rights aside, the Government must reasonably bear the burden of going forward with the trial since it alone has the ultimate capacity to do so. Therefore, the burden must logically fall on the Government since it is the prosecutor that is the initiating party in criminal proceedings. is respectfully submitted that the Government failed to carry that burden in the instant case, and the remedy is dismissal of the charges.

#### (4) Prejudice to Defendant.

Unfortunately, in requiring a defendant to show actual prejudice, Federal Courts have only obfuscated the meaning and enforceability of the constitutional right to a speedy trial. Impairment of one's defense, while perhaps the most salient form of prejudice, is often the most difficult to prove. Dickey v. Florida, supra, at 53. A defendant may not be able to show that he was harmed by the loss of documents or physical evidence. Potential

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the memory of those witnesses who are available may be dimmed by the passage of time. United States v. Marion, supra. Although it may not be difficult for the defendant to prove that his witnesses have disappeared, proving that those witnesses would have been material to his case is a considerably more troublesome problem. Dickey, supra, at 53. A demonstration of the harm caused by the impairment of a witness' memory may well be impossible, Id., although the harm may be very real.

Ironically, in cases where the defendant is required to show that he is prejudiced by loss of his witnesses' memory, the Court in effect is requiring the defendant to prove what his defense would have been without the delay, while the very basis of the defendant's motion is that passage of time has so clouded his and his witnesses' memories that they cannot recall what that defense would have been. See Ross v. United States, 349 F. 2d 210, 215 (D.C. Cir. 1965).

Justice Brennen took cognizance of the fact that precise proof of prejudice is rarely possible in most cases. In <u>Dickey v. Florida</u>, supra, he remarked at pages 53-54:

"But concrete evidence of prejudice is often not at hand. Even if it is possible to show that witnesses and documents, once present, are now unavailable, proving their materiality

the impossible to measure the cost of delay in terms of the dimmed memories of the parties and available witnesses.

As was stated in Ross v. United States,

121 U.S. App. D.C., 233, 238, 349 F. 2d

210, 315 (1965):

'[The defendant's] failure of memory and his inability to reconstruct what he did not remember virtually precluded his showing in what respects his defense might have been more successful if the delay had been shorter . . . In a very real sense, the extent to which he was prejudiced by the Government's delay is evidenced by the difficulty he encountered in establishing with particularity the elements of that prejudice.'"

Justice Brennan added, however at page 54, the following pertinent observations:

"Despite the difficulties of proving or disproving actual harm in most cases, it seems that inherent in prosecutorial delay is 'potential substantial prejudice.'

United States v. Wade, 388 U.S. 218, 337 (1967) to the interests protected by the Speedy Trial Clause. 'The speedy trial safeguard is premised upon the reality that fundamental unfairness is likely in over-long prosecutions. We said in Feally

of a speedy trial is an important safeguard . . . to limit the possibilities
that long delay will impair the ability
of the accused to defend himself,' and
Judge Frankle of the District Court for
the Southern District of New York has
stated that 'prejudice may fairly be
presumed simply because everyone knows
that memories fade, evidence is lost,
and the burden of anxiety upon any
criminal defendant increases with the
passing months and years'." United

States v. Mann, 291 Fed. Supp. 268, 271
(1968).

Tonited States v. Ewell, 383 U.S.

Apparently the Federal Courts have come to recognize the difficulty of establishing actual prejudice. There is increasing uneasiness about the requirement that prejudice be shown, at least where the delay is of Sixth Amendment proportions. Hedgepeth v. United States, 364 F. 2d 684, 687 (D.C. Cir. 1966); for further discussion, see 3 Wright, Federal Practice and Procedure, Section 814, page 314. Consequently, it is now more generally recognized that one may assume a growing prejudice to a defendant from a delay in bringing his case promptly to trial. U.S. v. Chin, 306 F. Supp. 397 (D.C.N.Y. 1969); Blanca Perez, supra. In keeping with this more recent and logical trend, it has been

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required when a criminal defendant asserts the Constitutional right under the Sixth Amendment See United States v. Wahrer, 319 F. Supp.

(D.Alas. 1970) and numerous cases cited therein. Rather, in such instance, the burden rests with the Government to prove "the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay." Nickens v. United States, 323 F. 2d 808, 814 (D.C. Cir. 1962);

Dickey v. Florida, supra; Blanca Perez, supra.

In the instant case, however, two circumstances stand clear. First the delay in prosecution was inordinate; and second, the result in prejudice to the defendant was manifest. The offense charged in the case sub judice alleges events scattered over one and one-half years and an entire continent. In four (4) years time, witnesses necessarily disappear, memories necessarily dull, particularly when specific times, dates and places are sought to be recalled. Again, the situation is compounded by the inability to locate witnesses because of their far-flung locations. In an alleged narcotic sale transaction, where lengthy delay was had prior to trial, the California Supreme Court recently declared:

"Petitioner was clearly prejudiced.

The most obvious prejudicial effect of
the long pre-arrest delay was to

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seriously impair his ability to recall JA45 and to secure evidence of his activities at the time of the events in question. Delaying the arrest of the accused may hinder his ability to recall or reconstruct his whereabouts at the time the alleged offense occurred. As stated by the dissent in Powell v. United States, 352 Fed. 2d 705, 710, 122 App. D.C. 229, 'The accused has no way of knowing, to say nothing of proving, where he was at the time and on the day the policeman says his diary shows he made a sale of narcotics to the policeman.' (People v. Wright, 2 Cal. App. 2d 732, 736)." Jones v. Superior Court, 3 Cal. 3d 734, (1970).

In summary, several points are uncontroverted:

- (1) Nearly four (4) years have passed from the date of the termination of the alleged offense;
- (2) No apparent reason exists for this inordinate delay and the government has offered none;
- The defendant was in no manner responsible . for the delay in his prosecution.

Consequently, prejudice may fairly be presumed because of the normal failure and dimming of memories over such a lengthy period of time, Mann, supra; Blanca Perez, supra.

The defendant's prosecution having been delayed beyond the point at which a probability of prejudice arose, and the defendant not being responsible for the delay, and it appearing that the Government might reasonably have avoided it, the burden must now shift to the Government to establish, if possible, that the reason for the delay was of sufficient importance to justify the time lost. Dickey, supra at 56; Blanca Perez, supra. Should the Government fail to meet that burden then the indictment must be dismissed.

IV

#### CONCLUSION

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that this Court exercise its authority and dismiss the indictment for unnecessary delay pursuant to Rule 48 (b) Federal Rules of Criminal Procedures; or in the alternative, that this Court dismiss the indictment for want of speedy prosecution under the Fifth and Sixth Amendments to the United States Constitution.

Respectfully submitted,

KIRSCHNER & GREENBERG

Y: / VChan

Attorney for Defendant

#### AFFIDAVIT OF RICHARD H. KIRSCHNER IN SUPPORT OF SAID **JA47** MOTION (Dated November 10, 1974)

AFFIDAVIT OF RICHARD H. KIRSCHNER

STATE OF CALIFORNIA

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SS. COUNTY OF LOS ANGELES )

RICHARD H. KIRSCHNER, being first duly sworn states that I am a partner in the law firm of KIRSCHNER & GREENBERG, and represent the defendant EDWARD ZUBER in the above-entitled case.

The records and files of the case indicate that

the following relevant events took place on the dates indicated:

11 Date: Event

12 August 1, 1968 Conspiracy alleged to have

13 begun

14 December 31, 1970 Conspiracy alleged to have

terminated

October 14, 1971 Mr. Zuber interviewed by agents

of the United States Securities

and Exchange Commission

19 August 22, 1974 Mr. Zuber subpoenaed to appear

before Grand Jury

21 September 25, 1974 Indictment returned by Federal

Grand Jury in New York

2. That in my several interviews with my client in preparation of his defense of this case, I have found that his memory of the events which occurred from four to six years ago 26 has faded and that he is unable to reconstruct events or dates relating to this matter so as to assist in his defense; that by reason thereof, I do not believe my client could effectively 29 testify on his own behalf, thereby prejudicing his right to a fair trial.

3. Both myself and Mr. Zuber have made numerous efforts 32 to locate witnesses and documents relevant to numerous overt

1 acts alleged in the indictment. Because of the number of years that have passed our efforts have been nearly entirely unsuccessful. SUBSCRIBED and SWORN to before 10th day of Anecas Pine 1974. OFFICIAL SEAL GLORIA ALLISON WETZEL NOTARY PUBLIC - CALIFORNIA PRINCIPAL OFFICE IN LOS ANGELES COUNTY My Commission Expires March 6, 1978 

AFFIDAVIT OF EDWARD ZUBER

STATE OF CALIFORNIA SS. COUNTY OF LOS ANGELES

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EDWARD ZUBER, being first duly sworn, states that I am a defendant in the above-entitled case.

- 1. Because of the lapse of time from the dates of the commission of the alleged offense until the present, I have been unable to recall many of the events which I believe could exonerate me. My memory lapse has been such that I have been unable to recall necessary names, dates and places in order to assist my attorney in properly preparing my defense, and I have been unable to locate witnesses I would call in my defense.
- 2. Upon the advice of my attorney I do not wish to 16 disclose the names of those witnesses to the prosecution; however, 17 I am prepared to make an in camera disclosure should the Court 18 require.
  - 3. I was interviewed on October 14, 1971 by investigators Oestrich and Glusband of the United States Securities and Exchange Commission regarding numerous events alleged in the indictment.

SUBSCRIBED and SWORN to before me

this 10 day of Mountage, 1974.

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Edward fubt

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By Commission Expires March 6, 1978

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1	mks	
2 3	LARRY GREENBERG, Esq.,	Attorney for Defendant Michael Clegg.
4 5	FREDERIC NEWMAN, Esq.,	Attorney for Defendant Howard Finkelstein.
6	JOEL WINOGRAD, Esq.,	Attorney for Defendant Jack Levine.
9	CHARLES WENDER, Esq.,	Attorney for Defendant Anthony Scardino.
10	JOHN DOYLE, Esq.,	Attorney for Defendant Alan Segal.
12	RICHARD KIRSCHNER, Esq.,	Attorney for Defendant
13		Edward Zuber.
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with Mr. Winograd.

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2	THE COURT: Who appears for Burney Acton?
3	MR. ROSEN: I do.
4	THE COURT: Please state your address and tele-
5	phone number.
6	MR. ROSEN: 30 Broad Street, New York City;
7	Hanover 2-8456.
8	THE COURT: Who appears for Azzerone?
9	MR. WALKER: That is Mr. Barry Feiner.
10	Mr. Feiner is at 919 Third Avenue, New York
11	10022; the telephone number is 355-2300.
12	THE COURT: Who appears for Michael Clegg?
13	MR. GREENBERG: Larry Greenberg, from the Legal
14	Aid Society, Federal Defender Service Unit; 15 Park Row;
15	374-1737.
16	THE COURT: Who appears for Howard Finkelstein?
17	MR. NEWMAN: Fred Newman, 20 Vesey Street, New
18	York City; 227-4141.
19	THE COURT: If you gentlemen have cards, that
20	would be helpful; give it to the reporter.
21	Who appears for Mr. Levine?
22	MR. WINOGRAD: I do; Joel Winograd; 205 West
23	34th Street, New York; LO5-1090.
24	MR. WALKER: Your Honor, there is another attorney

Maybe that should be stated for the

2 | record.

MR. SKOLNICK: I am appearing for the defendant Azzerone. My name is Marvin Skolnick; the firm name is Feiner, Curtis, Smith & Goldman, 919 Third Avenue; 355-2300.

THE COURT: Who appears for Mr. McKibbon?

MR. WALKER: Mr. McKibbon has not been apprehended, your Honor. A bench warrant has been issued.

THE COURT: All right.

Who appears for Mr. Scardino?

MR. WENDER: I do, your Honor. My name is
Charles Wender. The address is 123-60 83rd Avenue, Kew
Gardens, New York; telephone, 263-3235 -- as counsel, your
Honor, for Pape & Mallet of Texas.

THE COURT: Who appears for Mr. Segal?

MR. DOYLE: John Doyle, your Honor; 630 Fifth Avenue; 397-9729.

THE COURT: Who appears for Mr. Zuber?

MR. KIRSCHNER: I do, your Honor. Richard
Kirschner; 10850 Wilshire Boulevard, Los Angeles,
California. The telephone number is: Area Code 213
474-655.

Local counsel is Mr. Robert G. Morvillo,

1 Rockefeller Plaza, telephone number is 489-1577.

THE COURT: Do you have an application for admission for purposes of this case?

MR. DOYLE: Your Honor, I spoke to Mr. Kirschner, and he asks that I move his admission. I am a member of the bar, your Honor, and he is a member of the bar of the State of California and of the State of Colorado.

He has been an Assistant United States Attorney in the Central District of California for four years, and was in the -- also in the U. S. Attorney's office in Miami. His application is to be admitted for purposes of this proceeding.

THE COURT: Are you going to try the case when it is called by the Court? If you are engaged in California or elsewhere, that has much to do with whether I admit you or not.

MR. KIRSCHNER: I shall be ready, your Honor.

THE COURT: All right.

MR. WALKER: No objection.

THE COURT: Gentlemen, I called this conference to see whether we could set a trial date, an early trial date, and dispose of preliminary matters in the way of discovery, et cetera, that you might have.

The first thing I would like to do is to set, a trial date, and I would like to try the case in November

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about the middle of November. 2

Specifically I would like to start it on November the 18th -- that is a Monday, at 10 a.m.

MR. DOYLE: Your Honor, may I be heard with, respect to that?

THE COURT: Yes.

MR. DOYLE: Your Honor, I have a six weeks trial before Judge Lasker, which is a criminal case, commencing on October 28th, so that I just know I am not going to be available to start this on the 18th.

I would request a late date so I could have some time for preparation between th two cases.

THE COURT: Well, the case before Judge Lasker likely won't be ready for three years.

MR. DOYLE: Well, it is a firm trial date, and the motions are set.

THE COURT: I don't think the case should be up and the other defendants should be denied their right to a speedy trial, to accommodate one lawyer. I do not think it is fair.

MR. ROSEN: Your Honor, I represent the first defendant named, Mr. Acton. I was retained this morning My client resides in Forth Worth, Texas. It does present I might be r somewhat of a hardship and a handicap.

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your Honor, for November 18th -- I would make every effort to be but I have absolutely no knowledge of this case what-soever. It was not until 3.30 that I was able to obtain a copy of the indictment from Mr. Walker who presented me with a copy of it.

THE COURT: I realize that.

MR. ROSEN: I would make an effort to be ready on November 18.

THE COURT: That is five or six weeks from now

MR. ROSEN: Well, there are motions, your Honor.

that --

THE COURT: I will hear those now-- we will come to that later. The motions are not going to take forever I can tell you that.

MR. ROSEN: Will your Honor take oral motions?

get rid of today. If not, we will get rid of them in short order.

MR. KIRSCHNER: Your Honor, may I be heard on this, on behalf of Mr. Zuber.

I have surgery scheduled for my hand tentatively set for the week of the 25th of November, and I know of no way to avoid that at this point.

THE COURT: Well, one way to avoid it would be to

substitute somebody in your place.

MR. KIRSCHNER: Apparently it takes about six weeks after an injury like this for the physician to know where it stands.

THE COURT: Well, that would go over to the next year, which I am not going to go for at all, unless there is a reasonable time.

MR. KIRSCHNER: We will be ready thereafter.

The surgery will take less than a day.

THE COURT: I cannot try it after the 1st of the year. I have other commitments after that.

MR. KIRSCHNER: I was speaking of November 25th for myself.

THE COURT: See if you cannot change that date.

MR. KIRSCHNER: Well, it depends on what condition the finger is. If there is surgery it should be within eight weeks after the injury. That would be approximately eight weeks after the injury.

MR. WALKER: Your Honor, he is not stating that it will take eight weeks to recover from surgery.

MR. KIRSCHNER: Oh, no -- let me be clear.

The surgery itself will only take a day, or less. It is simply that the injury was sustained -- November 25th would be approximately eight weeks from the date of the

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injury. The doctor will look at it and perform the surgery. The surgery itself will take less than a day, and I will be ready to go the next day.

THE COURT: All right, we can work that out.

MR. WINOGRAD: Your Honor, for Mr. Jack Levine,

I am going to be engaged in a State matter which will

probably end the second week December. I could probably

be ready thereafter, but I am in the same position as Mr.

Doyle.

THE COURT: That comes near the Christmas holidays, and that is just no good.

MR. WINOGRAD: I realize that, Your Honor,

THE COURT: All right, I am trying to work it

We are going to go to trial -- I mean, everybody in a case like this is tied up here, there and every other place, and you do not leave the Court with very many reasonable opportunities.

MR. DOYLE: Your Honor, on behalf of Mr. Segal

next year. Don't you have any partners?

When do you say you can go to trial?

MR. DOYLE: Your Honor, I can go to trial at an

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time beginning January 1st.

THE COURT: That is after the 1st of the year.

When can you go?

MR. WENDER: Your Honor, I have been instructed by Pape & Mallet, the counsel on this case, to try to put the case over Until the 1st of the year.

MR. KIRSCHNER: I will be available the 1st of December, your Honor.

MR. GREENBERG: The second week in December, your Honor.

THE COURT: The second week in December?

MR. GREENBERG: Yes. I have two trials scheduled for the first week of December.

MR. WINOGRAD: The second week in December, your

MR. ROSEN: The first week in December.

MR. NEWMAN: I will be ready at any time after the end of November.

THE COURT: Well, the latest I can go is December.

1st. You will just have to adjust your schedules to that the first week in December, and that is ample time for everybody.

MR. DOYLE: Your Honor, that is physically impossible for me to do it.

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2	THE COURT: All right, we will sever you.
3	MR. WINOGRAD: Judge, I am in the same position.
1	THE COURT: No. What is your commitment?
5	I will take you subject to your trial. I will hear a
3	motion to sever if it goes on.

MR. WINOGRAD: Will that be done with me also?
THE COURT: Subject to your commitment.

What is your commitment? I want to know what it is now.

MR. WINOGRAD: People versus Vario, State
Supreme Court, Kings County.

THE COURT: And you have actually to be on trial?

MR. WINOGRAD: Absolutely.

MR. DOYLE: Your Honor, that doesn't allow a single day for preparation.

THE COURT: You have lots of time between not and then. That's it.

MR. DOYLE: I have this other six weeks trial.

THE COURT: I am sorry, I cannot run this court
just to suit your convenience.

MR. WALKER: Your Honor, the Government would like an opportunity --

THE COURT: Just a minute.

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All right, it is set, then, for December 2nd for the start of the trial. December 2nd.

All right, now, what is your problem?

MR. WALKER: Your Honor, the Government would initially like to state that we would like the opportunity to file papers or to respond to any motion to sever on the part of any defendant. We feel that --

THE COURT: You will have an opportunity.

The motions will come in if they are engaged on trial atthat time, actually on trial.

MR. WALKER: Very well, your Honor.

THE COURT: Now what else?

MR. WALKER: There is one other housekeeping matter. Two defendants were not present at the initial arrangement, who are present in court today, and their pleas should be taken today.

THE COURT: All right, we will take those please right now.

You remain and we will get to the other matters.

MR. WALKER: Very well.

Mr. Finkelstein and Mr. Zuber.

THE COURT: All right, take the plea, please

THE CLERK: Mr. Finkelstein, is this your

attorney standing alongside of you?

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DEFENDANT FINKELSTEIN: Yes, it is.

THE CLERK: Do you have a detailed reading of the indictment?

DEFENDANT FINKELSTEIN: Yes.

THE CLERK: How do you plead to the indictment?

DEFENDANT FINKELSTEIN: Not guilty.

THE CLERK: Mr. Zuber, is this your attorney standing alongside of you?

DEFENDANT ZUBER: Yes, it is.

THE CLERK: Do you waive a detailed reading of the indictment?

DEFENDANT ZUBER: Yes, I do.

THE CLERK: How do you plead to the indictment?

DEFENDANT ZUBER: Not guilty.

MR. WALKER: Your Honor, the Government would ask that a personal recognizance bond in the amount of \$15,000 each be the bail fixed for each defendant.

MR. KIRSCHNER: Your Honor, on behalf of Mr.

Zuber we object to that strenuously. Under the new rate
that have been promulgated as of July 1, 1974, summonses
are to be issued, unless there is some good reason for a
warrant to be issued. I take it Mr. Walker is also
asking for a warrant now.

MR. WALKER: No; I am just asking that bail

fixed to guarantee his subsequent appearance in court, in the amount of \$15,000 personal recognizance bond, which requires no cash or surety deposit.

MR. KIRSCHNER: I withdraw my objection.

THE COURT: Bail set in that amount: personal

THE COURT: Bail set in that amount; personal recognizance bond of 15,000.

MR. NEWMAN: Thank you, your Honor.

THE COURT: All right, now let us proceed.

What do you want in the way of --

Incidentally, on any of this discovery, on any of these motions, what goes for one goes for all so that we don't have to listen multiple requests for the same relief.

Everybody gets the benefit of everybody else's efforts.

MR. WALKER: Your Honor, perhaps I could briefly state what the Government agreed and consented to in private conferences with all the defendants.

The Government has agreed to furnish to the extent not stated in the indictment the times and places of the various means of the conspiracy and the overt acts of the conspiracy. In some cases these times and places and/or places are stated, but to the extent they are not the Government will furnish that.

The Government would also agree to make available documents which pertain to the substantive counts,

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that is, confirmation slips, any transfer records and letters that are referred to or may pertain to any substantive counts.

The Government also states that we have various documents, corporate documents pertaining to Pioneer

Development Corporation, and we have no objection to those being made available for inspection.

THE COURT: Where will you make them available, and when?

MR. WALKER: They will be made available in my office starting next Tuesday.

THE COURT: Is there any particular time?

MR. WALK 7: 4.30 -- 4 o'clock in the afternoon,
your Honor.

THE COURT: All right.

MR. WALKER: And I would ask each defense counsel to notify me in advance when they wish to come in and inspect the documents so that I will have them available.

THE COURT: All right.

MR. ROSEN: Your Honor, may I be heard?

I just wanted to ask Mr. Walker if he would also consent to exhibiting any stock certificates --

MR. WALKER: Yes.

MR. ROSEN: -- in his possession indicating the

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transferor and transferee.

MR. WALKER: Yes. By "corporate records"

I meant the stock transfer records of Pioneer.

THE COURT: Including these certificates?

MR. WALKER: Including the certificates.

THE COURT: All right.

MR. ROSEN: Thank you.

MR. WALKER: I should also state that I have brokerage records which I will make available -- any of the brokerage records referred to in the indictment, or brokerage house, and to the extent that I have those they will be made available as well.

MR. WINOGRAD: Would Mr. Walker also consider turning over to defense counsel either the grand jury testimony or testimony before the SEC, as well as any statements given by the defendants, to respective counsel?

MR. WALKER: Your Honor, I forgot to mention that. The Government will make available the grand jury testimony and statements in the possession of the Government by any defendant to counsel for that defendant.

MR. WINOGRAD: What about the SEC testimony?

THE WALKER: Yes.

MR. WINOGRAD: Thank you.

THE COURT: All right.

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MR. KIRSCHNER: Your Honor, we would also request that we be advised as to who the other co-conspirators are who have not been named in the indictment, if that is known to the Government at this point.

MR. WALKER: We would object to that on the basis that that calls for witnesses, revealing possible. Government witnesses.

MR. KIRSCHNER: Your Honor, in that wein we would also request a witness list consisting of the names and addresses of the Government witnesses, pursuant to Rule 16(e).

THE COURT: You are not entitled to witnesses except in a capital case, unless the law has been changed

MR. KIRSCHNER: Your Honor, I believe as of July 1st the Federal rules were amended. Rule 16(e) does provide that the Government will turn over the list to defense counsel unless they can demonstrate some basis note.

THE COURT: Is that so?

MR. WALKER: Your Honor, the Government is not aware of this particular rule. The Government takes rule position that we oppose the turning over of these names of witnesses --

MR. KIRSCHNER: I can produce it for the cour

MR. WALKER: Because we have information that

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this man's client has exerted pressure in the past, or has sought to do so, and specifically that threats have been made against individuals -- more specifically with regard to this man's client, the information that the Government has is that he has carried a gun in the past. Granted that it is some four or five years ago, that that information took place.

THE COURT: No, I deny it.

MR. WINOGRAD: Would the Government also consider turning over to defense counsel any copies of physical examinations conducted by the Government, such as handwritten analyses or anything similar that was used By the Government in connection with this case?

MR. WALKER: Yes, if and when such examinations are done, the Government will make the reports available to the defense.

THE COURT: Are there any in existence?

MR. WALKER: There is none in existence.

THE COURT: If they come into existence, make them available to the defense.--

I assume you mean the handwriting.

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MR. WINOGRAD: That is correct, your Honor.

THE COURT: How about line-up applications?

MR. WALKER: I do not believe there is any of

inquiry made?

that now. If something develops between now and the trial, it will be made available.

MR. KIRSCHNER: We would inquire whether or not there has been any electronic surveillance.

THE COURT: Has there been any electronic surveillance?

MR. WALKER: No, not to my knowledge.

MR. KIRSCHNER: Your Honor, we would request that there be some sort of memorandum secured by the Department of Justice, signed by someone in the Criminal Division, to the effect that the various agencies have been checked, the FBI, the Secret Service and so forth, to determine whether or not they monitored any of these defendants.

THE COURT: I don't see why. If counsel for the Government who appears here in the person of Mr. Walker is misrepresenting it, and Mr. Walker says "No", I would think that would be the best thing in the world to happen to your client.

MR. WINOGRAD: I am not suggesting that Mr.
Walker is misrepresenting anything at all, your Honor.
May I inquire as to whether or not there was an

MR. WALKER: No formal inquiry has been made.

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However, I will conduct a formal inquiry at the request of defense counsel.

THE COURT: Will you do that, and make the results available.

MR. WALKER: Yes.

MR. WINOGRAD: Thank you.

THE COURT: All right.

MR. DOYLE: Your Honor, may I address myself to the discovery and bill of particulars together.

With respect to the bill of particulars, your Honor, there are two key allegations with respect to the defendant Segal.

The first, and probably the most important in the various counts, is that the defendant Segal made untrue statements, misrepresentations or omissions of material facts in conversations or statements that he allegedly made about Pioneer and about the assets of Pioneer.

what he allegedly said that was true or false. There is simply nothing in the indictment about it, and Mr. Walker has opposed furnishing any further details as to what the defendant Segal allegedly said on any occasion, or even the substance of it that is said to be false or a misrepresentation or an omission of a material fact, and I think with-

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out that information it is virtually impossible to prepare to meet that key aspect of the cas.

THE COURT: I think you are asking for evidence.

MR. DOYLE: Your Honor, normally that is in the indictment itself. The defendant will be said that the following statements were made by him that were false, A through Z.

THE COURT: Well, I have looked at indictments
for 15 years --

MR. DOYLE: Your Honor, when I was here, in few every securities fraud indictment that I saw said that the defendant made a statement that the security of company X was valuable because it had an important mercury mind or had this or had that. There is nothing here that is concrete.

agree with you. I think you are asking for evidence.

In my view you are not entitled to it.

with respect to that is that the Government is opposing advising the defendant Segal of the names of any other perso no to whom he supposedly made the misrepresentations. In other words, we don't know who he said that to or where he supposedly said it. There again we read ONLY COPY AVAILABLE

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do not know where to go.

THE COURT: I think he satisfies that by giving you times and places.

MR. DOYLE: Very well, your Honor.

Now with respect to the second key aspect of this case, it is that it charges the sale of unregistered stock, and it charges wilfull violations of the Securities Act in that connection, and I would like to ask the Court to direct the Government to advise whether the defendant Segal is alleged to have had actual knowledge of the provisions, or the substance of the provisions, of the Securities Act relating to the registration of securities or whether he had actual knowledge whether they were applicable to the stock of this particular company.

Here again, your Honor, this is a very key aspect of the case. We do not know what type of wilfulness or knowledge, if any, the defendant Segal is supposed to have had, other than the boilerplate language of "unlawfully, wilfully and knowingly".

THE COURT: Denied.

MR. DOYLE: I would like your Honor to order the Government to advise whether it intends to prove any all acts not charged in the indictment.

THE COURT: There again I think you are calking

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for evidence -- unless he wants to volunteer it.

MR. WALKER: No, your Honor.

MR. DOYLE: Finally, your Honor, with respect to discovery and inspection, Mr. Zuber allegedly acted on behalf of Mr. Segal, and the Government opposes turning over any written authority that may exist, consisting of the authorization of Mr. Zuber to act on Mr. Segal's behalf.

I do not see any basis for opposing turning it over for inspection, if it exists.

MR. WALKER: I opposed the motion. I did not want to disclose whether the authority was written or oral. I believe that Mr. Doyle has the benefit of a very detailed indictment. The Government did not even have to allege that particular paragraph to be able to have the evidence admissible at trial, and the Government would not like to be pinned down on that kind of an allegation.

THE COURT: I think so, too. I think you are calling for evidentiary detail.

Denied.

MR. DOYLE: Your Honor, with respect to the 3500 material, the Government has advised that it intends to make it available the day before each witness takes the stand.

In order to expedite the trial and in order to make preparate

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tion of the trial more effective, we would request that the Government make available the 3500 material a few days before the trial.

THE COURT: I would direct the Government to make it available as soon as they can, without in any way jeopardizing their case, and I would also direct you not to wait until after the witness has testified, unless you feel compelled to do so for good and sufficient reasons.

MR. WALKER: Very well.

THE COURT: And I would also ask you to make sufficient photostats of 3500 material so that each counsel can have one, so that we do not have to wait while everyone reads it up and down the line.

All right?

MR. WALKER: Yes, your Honor.

MR. DOYLE: Thank you, your Honor.

MR. WINOGRAD: Your Honor, would the Government be kind enough to indicate how long they think the Government ment's case will take?

THE COURT: Can you help us?

MR. WALKER: Your Honor, I think it depends of course, on whether all the defendants are ultimately with us on the day of trial, whether there has been any pretrict disposition made of the defendants.

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However, the Government's estimation of this is that this trial can be completed within three weeks.

MR. WINOGRAD: In connection with that, your Honor, would your Honor be kind enough to explore the possibility of severance as to any other defendants named in this indictment at this time, knows of statements made either before the grand jury or the SEC?

THE COURT: You are talking about Brady?

MR. WALKER: Bruton.

MR. WINOGRAD: The Bruton problem.

MR. WALKER: Your Honor, I anticipate no Bruton problem, and to the extent that any statements are sought to be offered against any one defendant, the Government would take great care to see that those portions are redacted that pertain to the others.

THE COURT: I am sure you will do that so that we do not have any delays.

MR. ROSEN: Does your Honor have a copy of the indictment before him?

THE COURT: Yes, I have it but I do not have it before me at the moment.

(Handed to the Court.)

MR. ROSEN: May I direct your Honor to Count of the indictment entitled "Objects of the Conspiracy";

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under Count 1, Paragraph II.

(The Court examines.)

MR. ROSEN: Do you have that?

THE COURT: All right.

MR. ROSEN: With respect to that, your Honor, would your request the Government to turn over -- to allow inspection of any material taken under a search or seizure, which might be the basis for that Paragraph II, and whether or not that material was obtained pursuant to a warrant, and if so, by warrant, a copy of the warrant and affidavit accompanying it.

MR. WALKER: I can represent that there are no searches pursuant to any warrants or searches not pursuant to a warrant in this case.

MR. ROSEN: That answers it.

MR. WINOGRAD: Your Honor, you raised the question about Brady matter. I do not believe the Government responded.

Is there any Brady material?

MR. WALKER: The Government is not aware of any material, and is aware of its obligation under Brady, and will furnish such material when it becomes aware of it.

THE COURT: Anything else?

MR. DOYLE: Your Honor, there are certain other

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motions that I would like to file --

THE COURT: I do not want written motions.

MR. DOYLE: May I state what they are?

Your Honor, we have a motion to dismiss the indictment on the ground of unnecessary delay in presenting this case to the grand jury.

THE COURT: All right, I will hear that in a few minutes as soon as we get through with the others.

Any other discovery motions?

MR. NEWMAN: On behalf of the defendant Howard Finkelstein, the U. S. Attorney has informed me that at various times in his office he has made notes of conversations during interviews between himself and my client, Howard Finkelstein. I believe at that time he said he would furnish me with copies of the notes, although he did not mention it when he was listing that material which he would turn over.

MR. WALKER: If I have failed to do so it an oversight, and I will make such notes available.

MR.NEWMAN: Thank you.

THE COURT: All right.

Anything else?

MR. WENDER: Your Honor, I would like an opportunity to be able to submit written motions to the Court.

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I will hear any motion you want to make. You can write it out all you want but I am not going to read it. I will take oral arguments. I will hear you at any time. I am available any morning at 10 o'clock. You can arrange it by calling my minute clerk, whose number appears in the Law Journal every day. I do not see any need for it.

And if you have any afterthoughts, - I realize that this conference was called early and that some of you may have but you are not precluded from making any valid motions in any way -- I do not mean to do that at all. I am just trying to cut out all delays that are just unnecessary.

See if you can exhaust your memory on the motions you would like to make.

MR. WENDER: Your Honor, very frankly, we are of counsel, and the counsel who as of this date will be representing Mr. Scardino is in Texas. They have asked me to ask your Honor for some reasonable time in order to submit motions.

I will relay to them your instructions and I will then be able to be in a position to bring oral motions before your Honor.

already accomplished this afternoon. I would think that pretty much exhausts the discovery phase of this thing.

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MR. WINOGRAD: Your Honor, there is one other thing with respect to discovery. Mr. Walker said he would be kind enough to turn over to defense counsel copies of grand jury testimony, the SEC testimony of the particular defendant. I was wondering if we could have an exchange of this material between and among the attorneys.

THE COURT: So that you know what each defendant says?

MR. WINOGRAD: That is correct.

MR. WALKER: Your Honor, I think that is up to the defendants. So far as the Government's obligation under Rule 16, it is to turn it over to each defendant.

I am not going to turn over any statements of other defendants to a particular defendant.

THE COURT: I think he is right. I think that is something youhave to work out with your co-defendants.

MR. WINOGRAD: Okay.

THE COURT: All right.

Is there anything else other than Mr. Doyle motions?

(No response.)

motion, I would prefer to have a few days to research it and present it orally. I do not intend to do so in

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writing, but if I may have a few days --

THE COUT: I will, but let us hear the motion -- I may reverse myself if I am wro ng.

MR. DOYLE: All right.

Your Honor, the facts in this case were known to the SEC in early 1970, and there really is absolutely nothing that I can think of to justify the incredible delay that has been taken in presenting this case to the grand jury. This is an inherently prejudicial situation to some body such as my client who really has now, so long after the event, to try to reconstruct all the events of 1970.

I think in order to avoid dismissal of this indictment, and in view of the inherent prejudice in this kind of delay, that the Government has a very strong burden in justifying the delay to the Court.

THE COURT: Mr. Doyle, you say the facts were known to the SEC. Do you mean they completed an investigation?

MR. DOYLE: Yes, your Honor.

THE COURT: In 1970?

MR. DOYLE: Yes, your Honor. There was a civil proceeding in 1970 that resulted in decrees and the whole case waws wound up. It could have been referred to the United States Attorney in early 1970. This case ONLY COPY AVAILABLE.

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was discovered immediately after it happened, so this is not a recently discovered set of facts.

THE COURT: You mean they beat the Internal Revenue
by two years in the race to the Court House?

What about that?

MR. WALKER: Your Honor, the Government commenced its investigation in this matter promptly in 1972 when a criminal reference was made.

THE COURT: What about this point that the SEC had completed its investigation in 1970?

MR. WALKER: Your Honor, my understanding is that the investigation was not completed in 1970; that they had commenced in 1970 and that it extended for years after that. My understanding of it that it was not completed in 1970. The testimony was taken of his client in 1970, but the investigation carried on long after that.

I am not prepared on a detailed basis to answer that at this time.

THE COURT: All right, set up an appointment with Mr. Walker at 10 o'clock some morning and I will hear you in detail.

MR. DOYLE: Yes, your Honor.

THE COURT: And give me three or four cases that you think apply.

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mks MR. DOYLE: Yes, your Honor. THE COURT: All right. 3 5 6 because there may be different situations. 7 Government's position that --9 10 11 12 13 14 15 16 17 each of the other defendants' attorneys? . 18 THE COURT: Certainly. 19 20

MR. GREENBERG: Your Honor, I would assume that motion would be applicable for all defendants. THE COURT: Well, that is a little hard to say, MR. WALKER: Your Honor, it is going to be the THE COURT: I do not think I can say that. Normally I would, but I do not think so because the situation may be different as to each defendant. MR. ROSEN: Your Honor, may I just make a suggestion, that if Mr. Doyle's motion should be taken under consideration by your Honor, and if by any chance it should be resolved favorably in favor of Mr. Doyle's client, then would your Honor consider an application from MR. ROSEN: If it is denied in Mr. Doyle's case there would be no point in making it. THE COURT: Certainly. If I decide it favorably for Mr. Doyle I would direct Mr. Walker to advise all of

MR. ROSEN: Thank you very much.

you and to give you an opportunity to make it.

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MR. NEWMAN: If your Honor please, I would
appreciate it I assume the other attorneys would also -
if we could be notified the day you would hear arguments
on this motion so that we could at least be present.

MR. DOYLE: I will be happy to notify counsel, your Honor.

THE COURT: Will you notify counsel?

MR. DOYLE: Yes, I certainly will.

THE COURT: All right, set up the time with

Mr. Walker and the others.

MR. DOYLE: Yes.

THE COURT: And please do it at some time before some time during October.

MR. DOYLE: Yes, your Honor.

THE COURT: I would like it as soon as you can conveniently do it.

MR. DOYLE: Thank you, your Honor.

THE COURT: Anything else?

(No response.)

THE COURT: All right.

MR. WALKER: Your Honor, may the two defendants who entered their pleas today be fingerprinted and photographed?

THE COURT: Yes.

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I direct them to be fingerprinted and photographed.

liave that personal recognizance bond by noon tomorrow in the Clerk's office.

MR. WALKER: Your Honor, there is one other matter, and that is the personal recognizance bond, through an oversight for Acton and Cleggwere not signed or filed, and I would ask their attorneys to do so. They were here the other day.

THE COURT: Will the attorneys for Acton and Clgg sign the personal recognizance bond.

MR. ROSEN: Monday is a holiday. That will be done on Tuesday.

THE COURT: That's all.

TRANSCRIPT OF PROCEEDINGS BEFORE JA85 MACMAHON, D.J. ON OCTOBER 18,1974 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -----RETURN TO COURT REPORTING ROOM 803 FOR FILING UNITED STATES OF AMERICA VS. : 74 Cr. 908 BURNEY ACTON, et al., Defendants. : Before: HON. LLOYD F. MacHAHON, District Judge. New York, October 18, 1974, 3:45 p.m. APPEARANCES: PAUL J. CUPRAN, ESO., United States Attorney for the government: By: John Walker, Esq., Assustant United States Attorney DAHLE L ROSEH, ESQ., Attorney for defendant Acton 1011 WINOGRAD, ESO., Attorney for defendant Levine DOYLE, III, ESO., Attorney for defendant Segal GREENBERG, ESC., Attorney for defendant Cleag

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MR. DOYLE: Your Honor, this is a motion by the defendant Allan Segal for dmsimissal of the indictment based on the substantial preindictment delay in this case. There are only two cases that I would call to your Honor's attention. The first is the Supreme Court decision in Marion, which is 404 US 307, that came down in December, 1971, and the District of Columbia case of Ross, 349 F. 2d 210.

Very simply, your Honor, what Marion saws is that preindictment delay does not present a Sixth menament problem but it leaves open another type of constitutional problem with respect to preindictment delay, which is that of due process.

Essentially, the court holds that the right to speedy trial attaches only after a formal charge is filled against the defendant either in the form of a comptaint, an arrest or an indictment. However, the court does state in the majority opinion that a showing of actual prejudice can still entitle a defendant to a discussal based on preindictment delay.

The District of Columbia case in Poss dealt with a different theory of dismissal, which is that the court has supervisory power over the administration of the court and it can look into

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and in that case, the Ross case involved a delay between the conduct of a narcotics transaction and the filing of a complaint, which in that case was about 10 months, and the court in Ross held that there was not justified tion for the delay. It also balanced the prejudice in the case and it held that the indictment should be dismissed in that situation.

THE COURT: That is the D.C. Court of

MR. DOYLE: That is the D.C. Court of Appeals.

THE COUPT: What was the panel?

MR. DOYLE: Washington, Danaher and McGover

MR. WALKER: Danaher dissented, your

Monor, rather vigorously.

THE COURT: I would think so. Co ahead.

MR. DOYLE: Your Honor, the contention that Mr. Segal makes here is that there is an apparent solutional prejudice from the delay by reason of the fact that at least one witness, an important witness, the co-conspirator, Eddie Levine, is dead. He died ars ago. That the brokerage firms, the New Yorl Lrokerage firms, at least Karen is now defunct and

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of these transactions appear to be substantially dissipated over the years, and I understand the president of this company is also dead.

Now, briefly, the chronology of this case is that the order of investigation—the SEC opening the civil case was in April of 1970, which was just a month after the last concrete act alleged in the indictment.—I think there is a mailing alleged in March of 1970.—Mr. Segal's testimony was taken on a few occasions in the summer of 1970 and his testimon was completed by that time.—The criminal—a judgment against Mr. Segal in the civil action was entered in May of 1971, so that there was a period of almost a year between the time that his testimony was taken and a civil injunction was entered against him, and the one civil case was wrapped up, according to the doctor.

Mr. Walker has advised me that the criminal reference report in the case was in December of

MR. WALKER: Excuse me. Was dated De-

MR. DOYLE: I am sorry. Dated December.

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States attorney, as I understand it, in June of 1972, that Mr. Walker initiated his investigation in the fall of 1972, then had to deal with other matters, that he renewed his investigation in the fall of 1973, at which time he spoke to the defendant Segal and had spokes to the defendant Segal and had spokes to the defendant Segal and had waived counsel and had had several conversations with Mr. Walker. Mr. Walker has consented to furnish to me the notes of those conversations in connection with the discovery of the case.

Then apparently the intensive grand jury phase of the investigation commenced in earnest this fall, resulting to the indictment in October.

so that what we have here is a pattern of assigning this case a very low level priority among to various agencies. It doesn't seem to be an extraordinarily complex indictment, justifying the four and a half years that it did take to bring it.

It would seem that the STC and the U.S.

The energy, working either seriatim or in conjunction,

could well have brought this indictment within six

counts after the facts were discovered. They were

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place during a limited period from about October, 1969 until the middle or the latter part of 1970.

Now, the court has a six-month rule with respect to the trial of cases. We have a very elabor ate judicial apparatus guaranteeing to defendants in this court that after indictments are filed they will get speedy trials, and I know that your Monor works very earnestly in implementing that policy and that rule. But we have the unfortunate situation that on the other side, the preindictment side, there is virtually unlimited Intitude within the framework of the statute of limitations in the conduct of investigations, bringing them to fruition, so that very substantial prejudicial delays occur virtually without court supervision during that period, and Mr. Walker has called to my attem tion various cases that I am sure he will cite to womer Honor in which SEC investigations and U. S. attorner at investigations have taken four and three-quarter years. four years and seven months, four years and ten months, and I submit to your Honor that it is time that the count does exercise its inherent power over the administration of criminal justice in the court.

THE COURT: But doesn't Congress do that.

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MR. DOYLE: I think it really does, your llonor, to meet certain problems. If a case is discovered only a year before the statute runs the, of course, the statute of limitations is a protection.

vieldy bueurocracy can grind its wheels or perhaps to the end that no one will be unjustly accused?

is a key element of this. I think that the Ross candid say that in exercising its inherent power the court should balance the question of prejudice together that the question of justification for the delay.

It may be that if no one is prejudiced in any way by a substantial delay, and the Supreme Court in Marion did say that inherent prejudice, quote, in other words, rejudice simply from the passage of time, without the disappearance of specific items of evidence or a specific showing of memory problems, is not enough to invoke due concept problems, and the Sixth Amendment

Then the court said that there would be and beautist to dismiss the indictment. But the court's inherent power, which really is separate from the Sign.

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take into account a balancing of these issues, a balancing of the justifications for the extraordinary delay, which does seem to be very much of a pattern in these types of cases against the prejudice that does take place on the particular facts of the case.

your Honor, that the defendant Segal himself, of course, doesn't remember these events nearly as well now as h would have remembered them four and a half or five year: ago. It is particularly difficult in a case like this, where he is alleged to have made various representations to various people, and we just don't know what the representations were or who he made them to. So that it is really virtually impossible to prepare a defense as to that part of the indictment, which is really a crucial part of the indictment, given the allowant of the vacuum of information that we have either from my client or from the government.

So that I do think that where we stand in this is that there is a balancing test here in which projedice is a component. I don't think the courts have yet reached the stage where simple preindictment dolar in and of itself will justify the automatic dismissial of an indictment, but I think that we do have

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here enough apparent prejudice at this time to invoke the court's -- at least to invoke the court's
inquiry into the justification for the delay and also
for dismissal of the indictment.

for the motion of are you all as happy as I am with Mr.

Doyle's argument?

MR. MINOGRAD: That is our position.

MR. ROSEN: Your Honor, I just wanted to mention one point, and that was what your Honor says is so: with government agents you have the overly pping, you have the bureaucracy that takes place between them and so on. But where the United States Attorney's Office is handed the evidence, almost handed a prima facie case, certainly handed enough to go to a grand jury on, then we don't have that difficulties the bureaucracy; then we have a little bit of laxis and a little bit of dilatory conduct on the part of that particular government agency, to the detriment of the discondants, who are entitled to every opportunity

Now, in this particular case when the SEC of Pinished interrogating they not only turned over the Cher had gleaned from the testimony of Mr. Segal

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and others, but also the records and other paraphernalia which might have been vital to the government's case.

particular assistant was starting ab initio with nothing available. He starts off with a virtually semiprepared case. There should be no reason for four
years to elapse thereafter, to the detriment of the
defendants. In this particular case two alleged co
conspirators are missing, vitnesses whose testimony
might be vital to the defense of some of the other defondants involved, and they can't be found. Too much
time has clapsed. Others have died. The defendants cannot adequately, your Honor, present the type
of case they would have been able to present had this
thing followed upon the heels of the SEC investigation.

MR. WINOGRAD: Joel Winograd for Jack

I fully adopt Mr. Doyle's arguments on behalf of Mr. Levine. I would just like to add this further thought for the court's consideration.

My problem is even more difficult than Mr.

Doule's. My client has had an eighth-grade education

and he was a prizefighter for most of his life. It is

been very difficult for me to communicate effectively.

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with him in connection with the facts of this case.

In addition, your Honor, the witnesses that both attorneys spoke about being deceased at this point is the defendant Levine's son, and this is a witness who would have been beneficial to the defense of Jack levine and certainly had exculpatory evidence which would have exculpated Mr. Levine from the indictment which he now faces.

of the others because of the client that I have, his clucational background and his inability to communicat affectively the facts of the case.

THE COURT: How would his educational background have been improved if he had been indicted sooner?

have been improved. I am just saying it is that much more difficult for me to communicate with him and for him to recall facts about stock manipulations and forting and things of that sort. I mean, he knew there of these people, but I am dealing with a person with a limited education. That is all I am bringing the reson court's attention, your Honor.

MR. GREENBERG: Your Monor, Larry Green

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lerg for Michael Clegg.

I had a conversation with Mr. Clegg this morning by telephone and he informed me that the president of this corporation, of Pioneer Corporation I think his name is Bayard Weibert — who was in the center of this whole stock issuance, was an olderly man, he was the president of the company, and that since 1970 Mr. Weibert is also deceased, and that's why we join in this application.

Mr. Clegg feels that he has been prejudiced by the delay since Mr. Weibert, who was central to this whole case, is deceased. Thank you.

MR. WALKER: Your Honor, Mr. Doyle's statement of the law as expounded by the Supreme Court in the Marion case is substantially correct. Marion however, goes a bit further. Marion says that a sase could be made out under the due-process clause for preindictment delay dismissal in the event that, one, there is actual prejudice shown, so great that it amounts to a denial of due process, and there is some sort of intervional stratagem on the part of the government to delay in order to gain a tactical ad-vantage. There is no claim here that the government intentionally leaded to gain a tactical advantage. Indeed, that

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is not the case.

Briefly, I would like to review the facts,
fill in more of the facts for your Honor. I don't
think Mr. Doyle is seriously contending that the government in the U. S. Attorney's Office delayed unreasonably
from 1972 to the present. I understood that the
thrust of his complaint was the fact that the case
wasn't referred to the U. S. Attorney's Office as
rapidly as it could have been by the SEC. I would
like to deal with the facts prior to the time that it
came to the U. S. Attorney's Office and then deal with
the facts afterwards.

Before the case came to the U. S. Attorney's Office the year of 1970 and into 1971 was substantially taken up by the SEC civil action, and I believe that in December there was a complaint filed and the matter wasn't disposed of until the spring of 1971.

THE COURT: Where was that civil action?

MR. WALKER: In this court. I should also point out, your Monor, that the civil action named are individual who is not named in the criminal case and by the same token three individuals who are named in the civil case.

THE COUPT: What was the civil action

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for injunctive relief?

MR. WALKER: Injunctive relief, and it was consented to. Now, in 1971 there was a period of time, I believe some six or seven months, from mid-1971 to the end of the year, before the criminal refer ence report was actually written. I have spoken to the SEC investigator on this case and asked him the reason for that period of delay and he said there were reasons. First of all, they were contemplating bring ing the criminal action but were also observing the defendants to ascertain whether or not further enforcement proceedings were necessary, and they did come to that determination. They came to the determination that the defendant Segal was not obeying the civil injunction and that he was continuing to engage in what they believed were unlawful activities, and as a result of that wrote the criminal reference report.

Now, when this criminal reference report

was prepared in 1971 further testimony was taken after

the sivil action had been filed, further testimony was

taken by the SEC, and they conducted further investing

tions. So it is very difficult for Mr. Doyle, I think,

to make out a claim of unreasonable delay prior to the

criminal reference report being written in December of

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Mow, the criminal reference report was written and, as happens in these matters and as is the normal procedure, it is referred to Washington, it goes over to the Justice Department, then it comes back up to the b. S. Attorney; Soffice, and the bureaucratic machiner takes its toll. The case did not come into the U. S. Attorney's Office until the late spring of 1972. It was assigned to the case at that time. I immediately began investigating the case. I sent out subpoenas too brokerage records. A lot of work had to be done. I conducted the investigation until I was faced with two lengthy trials in the summer of 1972 which took me away from this case. I had other matters in the U. S. Attorney's Office that had to be attended to.

of 1973 by questioning witnesses when I was free of other responsibilities. I questioned witnesses in September and October of 1973, including the defendant Segal on several occasions, and I found his memory to be remarked by acute at that time as to facts which had occurred daring this particular case, and although I disagree that is statements to me, he had very definite opinions.

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and reported very definite facts to me. I never questioned Mr. Segal's memory and I don't think Mr. Doyle really can question Mr. Segal's memory. I don't think that is really a relevant consideration under the cases.

In Movember and December of 1973 this case was presented to a grand jury. Again I had to go on trial and was on trial for the first half of 1974 in various matters. I commenced this investigation again in the grand jury from July through September of 1974, until the filing of the indictment.

there was no unreasonable delay, that the government was moving with deliberate speed, but not with haste, and there are definite policy objectives, your Monor, these investigations not being conducted with undue haste. In this particular instance a defendant who is named in the civil action was determined not to have marranted indictment in the criminal action. By the late token, further perpetrators who are not named in the civil case were determined to have been criminally responsible by the grand jury and were named in the criminal matter. Those are the defendants

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that there is a definite policy objective to having deliberate, careful investigation, and these objectives are wholly apart and unrelated to a speed trial claim, which only arises after indictment or after an arrest, as the Supreme Court has pointed out in Marion.

Now, the Second Circuit has decided numerous cases on this issue and I have culled out several of the cases, the more recent cases, which I would like to cite for the record. There is United States as Schwartz, 464 F. 2d, a 1972 citation. There was a five-year delay there. The court affirmed the jude ment of the court below in denying the motion, finding actual prejudice.

In United States against DeMasi, 445 F. 2d 251, a 1971 decision, a four-year delay was not unwar ranted, and the court cited the need for a deliberation.

In United States against Ferrare, 452

1. 4d 868, a Second Circuit decision, there was a deta

of almost four years, and the government had possession

of the case for two evers, but there was no showing

of constantial prejudice or that the delay was

purposeful, as the court stated.

THE COURT: Were all of these cases after trial on review of the convictions?

MR. WALKER: All of these cases were on review of the convictions. That points up another thing, your Honor, and that is that there must be a showing, if a defendant is ever to prevail under these situations, of real, substantial prejudice, and in sever to cases these claims were -- well, for instance, in United States against Quinn there was the death of three witnesses, a case which the United States Attorney's Office brought in 1960 on 1963 facts, and there was no prejudice there because no actual prejudice could be demonstrated.

In short, your Monor, there is a definite policy objective to having deliberate investigations and the Second Circuit has uniformly in complex securities fraud cases affirmed denials of this motion.

I would like to point out that with resp to this investigation this is a complex case, the in dictment is in many counts, the facts, the indictment demonstrates that the case has a factual pattern that is intionwide, from New York to California, there

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moved with deliberate speed but not with haste in this investigation, and the case was brought within the statute of limitations, which is the primary safeguard for a defendant in this instance.

Beyond that, your Honor, I don't propose to address myself to the Ross case. I think it was an aberration, frankly.

THE COURT: Was Poss before a trial?

MR. WALKER: Ross was after a trial.

THE COURT: After a conviction?

MR. WALKER: After a conviction, your house but the court pointed out that they did not like the conviction because it was based on the single testimon; of a policeman who had to refresh his recollection with notes.

that the Ross case was decided before Marion and Marada a case which reversed a District Court, District of Columbia District Court dismissal. I don't think that Ross could have been decided the way it was

I have nothing further, your Honor. ONLY COPY AVAILABLE

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MR. DOYLE: May I be board very briefly, your Honor?

THE COURT: Yes. I want to ask you, I'r. Doyle, do you know of a single case where a court has dismissed an indictment on this ground?

MR. DOYLE: Your Honor, there was Blouner, but that was pre-Marion. We do have a problem of the courts adjusting to the impact of the Marion case.

Browner was early in 1971.

THE COURT: It seems to me -- well, go ahead. I will hear you.

MR.DOYLE: Just to cover the points
that I was going to make, your Honor, with respect to
whether Marion requires both actual prjudice and tactions
delay, that was what the government conceded would
constitute a violation of due process. It is not what
the court held.

At the very end of the majority opinion the court said:

"Events at the trial may demonstrate actual prejudice but at the present time applicant's due practice claims are speculative and premature."

That brings me precisely to the point I

in ing to make. Aren't we premature here?

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we have to await events at the trial?

MR. DOYLE: Your Honor, I think we have the outlines of prejudice. I think if I could spend a little time putting some flesh onto these claims I could probably do this at a hearing.

THE COURT: I don't think that any hearing would advance the thing one bit, because it seems to me that you can't definitively answer whether a defendant has been prejudiced until you see what happens at Suppose he is acquitted. How is he prejua trial. diced, in a due-process sense?

MR. DOYLE: Your Honor, there are a few concrete points that could be established. difficult to assess the overall impact.

THE COURT: Suppose his guilt is established by documentary evidence.

I would suggest that the only MR. DOYLE: way to do this before trial, certainly based on the facts as I now know them, it would be difficult to gav that there is a specific, concrete prejudice. I think that if I had some time to prepare it we could develop some areas where I could show that Mr. Segal can't prepare his defense adequately. It is true that he might be acquitted anyway, but that doesn't solve

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the due-process question. It may be that even having been denied due process a jury would accuit him.

But the court does have to decide the due process question at the time it can decide it, when the facts are available. I think that the deaths of witnesses are easily ascertainable. The problem of --

THE COURT: Those witnesses might be cumulative. There is no way of knowing.

MR. DOYLE: There is a problem of recollection, even if a defendant doesn't take the stand, in terms of preparing the case.

THE COURT: But again a witness! recoll tion can be refreshed. I see that every day of the week.

MR. ROSEN: Your Fonor, may I be heard for one moment?

THE COURT: Sure.

MR. ROSEN: I would just like to take up wour Honor's last point about witnesses having their resollection refreshed. In one of the cases cited by Mr. Walker what motivated the court was the tool that the witness had to have his memory refreshed.

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If your Monor could just visualize on th.

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handed documents to refresh their recollection and an effect which would serve the same purpose as a script in a play, just reading the lines and putting it downlasted on your ability, memory ability, to repeat line then testifying, I believe your Monor could see that pretrial there could be prejudiced under those conditions.

Now, the government's witnesses, as 'r.

Walker indicated, are scattered from coast to coast,
and if they have to have their memory refreshed as to
what transpired almost five years ago in 1970 they
are certainly going to have to have their memories refreshed, and in order to give them that recollection
they would be shown document after document, which coult
only, as I say, your Monor, provide a script for the
witness' testimony, all to the disadvantage of the defendants.

prior to a trial there could be prejudice because we can anticipate what can happen on the trial. It is too late upon the trial, after a witness refreshed collection from constantly receiving this script back the jury would be impressed by his testimony.

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THE COURT: I don't see how it is too late. You can always move after conviction, after affirmance, under 2255.

MR. ROSEN: Your Honor, that's like heals the burn after you get the burn. We are trying to avoid the burn if we can.

THE COURT: I am ready to rule on it.

MR. ROSEN: May I just say one thing, that Mr. Walker admitted that this stuff laid on his desk for one year, then at another interval for six months. So for a period of 18 months -- we are not saying that it was stratagem on the part of the Unite : States Attorney's Office, but certainly the result is the same. We must disregard the means and just look at the end. The end result is the same.

For 18 months absolutely nothing was done, according to Mr. Walker's own statement.

MR. WALKER: That is not true.

MR. ROSEN: You gave the period of one year, Mr. Walker, during which you said you were actually engaged on other matters, and for an inter-lude of six months you did not do anything.

MR. WALKER: The problem, your Monor,

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all cases simultaneously.

of you know, extensive experience in multidefendant securities fraud cases. They are complex. They often involve, as this one seems to, based on the indicated, many transactions, extending over a long period of time. They are intricate, they are complicated of time. They are intricate, they are complicated of fraud is involved they are always difficult to penetrate. Schemes are always set up in such a way that they are hideen, concealed. Investigations of this nature obviously take time.

More than that, they take care lest you indict somebody who is wholly innocent. It is vereasy in the very sweeping nature of a scheme or a conspiracy to sweep in bystanders, just to indict necesshose only crime is more association, and to avoid that there must be careful, thorough investigation.

These cases usually involve many decument many transactions and numerous witnesses, and I gath from the very nature of Mr. Walker's statement to me that the case is going to take three weeks to try that this case is going to involve that. Also that case obvious from what you tell me.

So that assuming that witnesses would to

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on a hearing to facts as you have outlined, Mr. Doyle, and as the others of you have, I think you fail to show sufficient prejudice for the court to grant this motion.

Accordingly, I deny the motion.

other question. I spoke to my client about the possibility of having another lawyer try the case and his response was absolutely negative on it, your Monor. He is very anxious for me to try it. I think a lot of that has to do with the fact that I have been representing him for a number of months and he feels that I know the case very well and he feels confortable with my representing him. He is very much opposed to getting a new lawyer at this point.

Lafore Judge Lasker scheduled for the 29th that I am even having trouble preparing for now, and at 5 o'close I am going to ask Judge Lasker for a two-week adjournment to get ready for that case, because it is realled full-time proposition. It is just very clear that whether or not I get that adjournment, co-counsel and I will be there at 5 o'clock to request the --

THE COURT: I can tell you now you wil:

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MR. DOYLE: The chances are overwhelming	
that I am going to be actually on trial on December 1	١.
THE COURT: I don't see that. You ju	
mount this up. You adjourn before Lasker, then you	
come and adjourn before me. You just byramid it.	
MR. DOYLE: He may not grant the adjour	, , .
ment, your Monor. I am only asking for it because	
I need it. That is a prior commitment that I had to	
Judge Lasker.	
THE COURT: You have a commitment to qu	
at a certain time. If Judge Lasker adjourns it that	

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is a conflicting adjournment. You can tell him that

MR. DOYLE: But your schedule is conflict ing anyway. I will be actually on trial.

THE COURT: I don't see how. I told we would see whether you are on trial at the time. you are then we have a problem.

MR. DOYLE: But we still eliminate preparation.

THE COURT: No, you can prepare this care. MR. DOYLE: Even using all the time I lave available I can't barely be ready for the trial on the 20th, your Honor.

THE COURT: I don't understand why you

a very able one. I see no reason why you can't jugg!

two matters at once. When you were an assistant

United States attorney you frequently juggled as many
as 10 or 15 matters all the time, equally complex.

MR. DOYLE: Just like Mr. Walker had to drop this case on two or three occasions because he had long trials, when you are preparing --

THE COURT: No, no. If you have too much business tell your client to hire somebody else.

MR. DOYLE: A one-month adjournment would solve the whole problem, your Honor.

THE COURT: Sorry. Can't do.

MR. DOYLE: I think it would be agreeable to the government and to the other defendants and it would eliminate the anguishing situation that I amin.

THE COURT: I don't see any anguishing situation.

MR. ROSEN: Excuse me. Your Honor, that is without prejudice to a renewal upon the constitution of the trial, your denial of the motion.

THE COURT: Yes, sure, always.

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.	MR. WINOGRAD: Your Monor, that December
:3	2nd date is firm and final.
4	THE COUPT: That's firm.
ā	MR. WINOGRAD: Even if all seven attorn
15	say the date is not agreeable or is not convenient to
	them?
8	THE COURT: I told you it would be subject
9	to your prior commitment, didn't I?
10	MR. WINOGRAD: Right, that's correct.
11	THE COURT: I meant that.
122	MR. WIHOGRAD: Thank you.
1:3	THE COURT: We are going to go with what
14	is left December 2nd.
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I (We) hereby certify that the isrageing is a true and accurate transcript, to the best my (our) skill and ability, from my (outenographic notorpi this proceeding.

Official Court Reporter

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1	TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, D.J. ON JA114 rgjp NOVEMBER 27, 1974
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	UNITED STATES OF AMERICA, :
6	Plaintiff, :
7	vs. : 73 CR. 908
8	ALAN SEGAL, et al., :
9	Defendants. :
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12	November 27, 1974
13	10:00 a.m.
14	BEFORE:
15	HON. LLOYD F. MacMAHON,
16	District Judge.
17	APPEARANCES:
18	PAUL J. CURRAN, ESQ. United States Attorney for the
19	Southern District of New York, BY: JOHN M. WALKER, JR., ESQ.,
20	JOHN SIFFERT, ESQ.,
21	Assistant U.S. Attorneys
22	JOHN DOYLE, ESQ.
23	Attorney for defendant Segal
21	FRED NEWMAN, ESQ. Attorney for defendant Finkelstein
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MR. DOYLE: Very well; your Honor. I think that I would prefer, if your Honor please, not to try to make any specific representations at this time as to what precisely--

THE COURT: I understand, Mr. Doyle, and I obviously can't make any decision, other than tell you the way I feel about it, and I don't want to mislead you in any way.

MR. DOYLE: Thank you, your Honor.

Your Monor, the second motion is a renewal of the dismissal motion based on prejudicial delay. As the Supreme Court did say in Marion, as your Monor said the last time we dealt with this issue, a showing of actual prejudice, even in a case where there has been no prior arrest, if there has been substantial delay in the presentation of the case to the grand jury then the Court upon a proper showing should dismiss the indictment.

Now, I have found out from my client and from other investigation in the case that there was prepared in 1969 what my client refers to in his narrative of the facts of this case as a due diligence file, and by that he means a collection of materials on Pioneer Development Corporation consisting of geological surveys, assay reports, economic feasibility studies, plus other materials concerning the mercury mine that the company acquired at the end of 1969.

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tions of the company.

There was a company called Precise Power and there was a company acquired called Pioneer Casualty, and it was as Mr. Segal described it to me in a white binder and it was given to Mr. Schiffman, who is named as a co-conspirator in this case, who I understand will be a Government witness, and Mr. Schiffman gave it to Karen Securities Corporation in late 1969 with the request that Karen Securities Corporation evaluate the stock and determine whether Karen would be willing to place quotes in the pink sheets with respect to the stock.

Now, this due diligence file is critical to the defense because one of the components of the defense in our case is that Mr. Segal believed in the value of the mine and he believed the value of the company and its assets and of its prospects and that any representations that he may have made to anybody of an optimistic nature to anybody were true to his knowledge and belief and they were not lies or will-ful misrepresentations.

The most critical piece of tangible evidence to support Mr. Segal's stake in this case is this due diligence file. Mr. Walker told me that the people he intends to call do recall having seen such a file and that it has been in

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The SEC commenced this case, as your Honor knows from prior discussion, fairly early in 1970 and was investigating the case on a more or less regular basis until the end of 1971 and there was a criminal reference over to the United States Attorney's office in 1972.

Now, I think that the Government clearly has an affirmative obligation to preserve evidence as critical as this to the presentation of a defendant's defense and somehow or another, and I can't explain it, perhaps Mr. Walkerwill make representations to the Court about it, this due diligence file, as my client describes it, has disappeared and it is really on that basis that I renew my motion for actual dismissal based on actual prejudice.

MR. WALKER: Your Honor, if I could speak on that. To my knowledge, neither the Government nor the SEC has ever had it. It is not a question of the Government having obtained evidence and then somehow having it disappear so that it is unavailable or somehow being suppressed by the Government. That is not the case at all. Efforts were made by the SEC to have a complete investigation in this matter and their investigation did not turn up the due diligence file if there was one.

The Government--the U.S. Attorney's office, when we consensed this investigation, searched and contacted

every witness and asked for all material bearing on this case and a file as such was never produced to us. We even went so far as to subpoen the entire records of Karen & Company, which is a defunct brokerage house, and I have those records downstairs in my office in five file cabinets. I searched those meticulously to look for the due diligence file and it is not there.

THE COURT: Is this file so labeled "Due Diligence"?

MR. DOYLE: I don't think it is so labeled. It was

in a white binder, as I understand it, and it probably said

"Phoneer Development Corporation" on the cover.

THE COURT: Where do you get the title?

MR. DOYLE: From my client. He refers to it as that. That is apparently the way Schiffman referred to it and the broker at Karen referred to it. It is simply a fairly arbitrary characterization.

THE COURT: What was its contents?

MR. DOYLE: What was in it?

THE COURT: Yes.

MR. DOYLE: The best that I understand it, your Honor, is it consisted of a good deal of material about the mine claims that were acquired. There was a mercury mine in Churchhill County, Nevada, a series of mine claims that the gomeony acquired. There was scientific material and technical

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material about the claim in the file. As I understand it, that was the main substance of the file, and then as I said before, there was other material on other acquisitions of the company.

Now, Mr. Walker said they were subpoensed, but I don't know when his subpoenses were served.

THE COURT: I was asking you this not to get into when they were subpoensed, but to get a more definite description of what was in the file which might guide Mr. Walker in telling me what efforts he has made to obtain that material.

MR. WALKER: Your Honor, I have obtained, and Mr. Doyle is aware of this, two mining reports which I have attempted to check out and which to date I can only say I have determined that they were prepared under very suspicious circumstances and I haven't been able to locate all of the people who were involved in the preparation of the report. I have spoken on the telephone to the man who prepared—who actually prepared the report, Mr. Lattig. I have those reports which were apparently given to Mr. Segal and Mr. Doyle has seen them. One of them does bear a white cover and has the name "Pioneer Development Corporation" on it and it may very well be that that is the report that Mr. Segal is referring to

MR. DOYLE: Mr. Segal has seen this and he says

this is just the bare bones. He doesn't specifically recognize this.

THE COURT: Who had possession of this at the time Segal saw it?

MR. DOYLE: Schiffman had it. It was given to Segal by Acton and Clege, who were the principals of the company. Segal gave it to Schiffman--

THE COURT: Who is Schiffman?

MR. DOYLE: He is a co-conspirator. He was the attorney for Segal at the time and also of Karen & Company, an over-the-counter security house. Segal took it to Schiffman, who gave it to Karen, and said, "Will you evaluate this stock and put in a bid and asked price in the pink sheets."

That is the chain of custody, as I understand it

THE COURT: That is all under the defendant's control, every bit of it. The defendant gives it to his lawyer,
and his lawyer takes it to the pink sheet man to act on. I
don't see how the Government can be faulted for that.

MR. DOYLE: The SEC should have subpoensed it in 1970. It was the Government's investigation, it wasn't Mr. Segal's.

As it was Karen & Company was the last one to have had it. Apparently no subposna was served on Karen & Company where the SEC initiated this case. I think what Mr. Walker is

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referring to is a fairly recent subpoena.

MR. WALKER: Azzerone testified before the SEC in 1970, but I can assume that when they spoke to Azzerone in 1970 they asked him for all relevant documents bearing on the case.

THE COURT: In any event, in your search, what have you done?

MR. WALKER: I have searched all of the Karen records and I have not found any group of materials that could in any way be considered to be a due diligence file in this matter.

I have also spoken to Mr. Azzerone, who I intend to call as a witness.

THE COURT: Who is Azzerone?

MR. WALKER: He pled guilty in this case.

THE COURT: What is his connection with this

file?

MR. WALKER: He was the principal of record of Karen & Company, the firm that opened the trading in the stock.

THE COURT: I see, the pink sheet man?

MR. WALKER: Yes. He was the one who actually reported to the pink sheets and put in an application to the pink sheets for the opening of the steel and he, according to

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Mr. Doyle, received this due diligence file from-he received it from Schiffman who got it from Acton.

THE COURT: And he denies having seen it?

MR. WALKER: No.

THE COURT: What does he say?

MR. WALKER: He said he did get some documents at the time, according to what he tells me and what he will testify, but he didn't examine them very closely. They were given to him just so he will have something in his files.

THE COURT: What did he do with them?

MR. WALKER: He kept them and then they weren't in his records when he turned all of his records over to me and that's all he can recall about it.

THE COURT: Does he recall any SEC subpoena in there?

MR. WALKER: He recalls going to the SEC but he does

not recall turning the records over to the SEC at that time.

THE COURT: What does the SEC say?

MR. WALKER: The SEC says that they asked him for documents and he at that time produced whatever documents they asked for.

THE COURT: Do they have any rost of what was turned over to them?

MR. WALKER: No, but I can find out by going back to the dec transcript and determining what the OEC greek calls

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asked for at that time and what was turned over.

THE COURT: But there aren't any records of what was turned over?

MR. WALKER: Your Honor, I will have to check on that to make absolutely sure as to what was turned over.

The position that the Government takes is that whatever reliance Mr. Segal seeks to place on any documents which he obtained from Action and Clege, he certainly can make that assertion by virtue of the fact that the two reports are available, if those reports were included in the due diligence file, and Mr. Doyle claims that they were the main component of the due diligence file, plus he has whatever centracts were entered into by this company during that period of time, and if those were components of the due diligence file Mr. Doyle has seen those documents and he can bring those out on cross examination if witnesses can identify them.

In fact, it is my belief that most of these documents are in existence. They may not be in the form of a
due diligence file in Karen & Company, but they are documents
which have been obtained from various other courses which are
part of the discovery which has been shown to Mr. Doyle.

THE COURT: What satisfactory answer have you got-

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2	office, what they did with it and what they received; what
3	came into their possession from the brokerage office and
1	what they did do with it?
5	MR. WALKER: They have preserved whatever they re-
6	ceived from this brokerage office.
7	THE COURT: You have someone who knows that?
8	MR. WALKER: Yes, because I received the entire
9	SEC file.
0	THE COURT: But there has been no tampering with
1	it? This is what they received from the brokerage office
2	and this is that file intact and they received nothing else?
3 .	MR. WALKER: I can represent that they have nothing
4	that what they received from Karen & Company was turned over
5	to me intact in its entirety.
6	THE COURT: And you have that file now?
7	MR. WALKER: I have the materials from that file.
8 !	THE COURT: Have you made those available to Mr.

Doyle?

MR. WALKER: Yes.

MR. DOYLE: Your Honor, the only thing that we don't know is what they asked Mr. Azzerone to give them.

THE COURT: What difference does that make, if they represent this is what we got and here it is?

WR. DOYLE: Well, the difference is that if they

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didn't ask for this file and then they waited four and a half years to get their indictment--Mr. Azzerone doesn't have it.

THE COURT: I see your point, that they were negligent in not subpoenaing this file and that therefore the delay has prevented -- I see your point. I don't see much of it. If that is your point I would deny your motion.

MR. DOYLE: I think because of the non-existence of the documents is the delay, quite simply. If this indictment had been brought in 1970 then we can go to Mr. Azzerone and say, "Give us the file." Now that it is the end of 1974 Mr. Azzerone doesn't have it and the SEC never asked for it.

THE COURT: One, your client's description of the file is at best vague, and there is no satisfactory demonstration to me, Mr. Doyle, that what you have seen is not in fact that file. Perhaps in some other dress, but I don't see how you point to any specific documents that are missing. You don't show me any break in the chain of custody here once it came into the Government control. What happened to it in Karen's office the Government can't be responsible for. It can only be reponsible for what it cot.

Do you know what the subpoens did ask for? Was there a subpoena?

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MR. WALKER: Your Honor, Mr. Azzerone was brought down. I can only assume that it was under subpoena. I will check on that and make sure what the request was. I don't have that precise information at the present time.

THE COURT: I think you should run that down and see whether they did fail to subpoen something, but even assuming that they did fail to subpoen I will deny the motion, but I would like to know what the answer to it is, Mr. Walker.

MR. WALKER: Very well.

Could I introduce John Siffert, who will be assisting me? He is a new assistant in the office and he clerked
for Judge Gurfein.

MR. DOYLE: Your Honor, one of the persons named as a co-conspirator in the case is under Government subpoena and Mr. Walker has said that he probably does not intend to call him as a witness. His name is Sheldon Lamb. He is located out in the hills of Nevada and he is very difficult to serve. I have a process server who told me he is going to have difficulty serving him.

I wonder if Mr. Walker can make a representation to the Court that he will notify Mr. Lamb that he is still under the compulsion of the subpoena. Mr. Segal and I would be very happy to post whatever mileage fees are required if

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we are unable to serve him. I am worried that if we don't serve him and the subpoena lapses because he is told that he doesn't have to appear, I think we may lose a witness.

MR. WALKER: I think in the interests of fairness I have no objection to that, but I would like to say that while I have asked the marshals to serve Mr. Lamb I have not received a reply from the marshals so I cannot say that he is definitely under Government subpoena at the present time.

MR. DOYLE: I thought he had already been subpoenaed.

MR. WALKER: No. I think Mr. Dovle should continue his efforts to serve him.

MR. DOYLE: We will do that.

THE COURT: And you will continue yours.

MR. WALKER: And I will continue mine.

MR. DOYLE: Thank you, your Honor.

THE COURT: Does that exhaust your motions?

MR. DOYLE: Yes, your Honor.

THE COURT: Mr. Newman?

MR. NEWMAN: If your Honor please, I am Fred Newman and I represent the defendant Finkelstein.

I just want to inform the Court that I was notified late yesterday afternoon of Mr. Doyle's two potions and I love I for the first time yesterday afternoon shout this

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so-called due diligence file. My client, Mr. Finkelstein, was unaware of its existence and accordingly, despite the fact that your Honor has denied his motion to dismiss the indictment, I would like to join with him just for the record in moving that the indictment be dismissed.

THE COURT: Mr. Newman, were you present at our first pretrial conference?

MR. NEWMAN: Yes, I was.

THE COURT: Don't you recall that I said whatever motion that was made as to one defendant, my ruling would be the same all around? Let's understand that, otherwise throughout the trial we will have five lawyers standing up and making the same motion. The ruling applies to all. You get the benefit or the detriment of the ruling, whichever way it is.

MR. NEWMAN: Thank you, your Honor.

MR. DOYLE: Thank you, your Honor.

THE COURT: Are there any unforeseen problems here about going to bat Monday morning?

MR. WALKER: No, your Honor. I think we can go forward.

I would like to tell the Court that I have invited Mr. Doyle, who is the attorney for the principal defendant in the case in the sense that he was involved in more of the

transactions, to come into my office on Friday at 2:00 and to review all of the exhibits in the case, hopefully with a view to expediting their admissibility at trial. I think that Mr. Doyle and I have been working together on this and we are working towards a series of stipulations at least to be given orally to the jury so that we don't have to delay the trial with calling thousands of brokers and bankers to testify as to records.

THE COURT: I would hope not.

MR. WALKER: That is what we are both working for.

THE COURT: Are you authorized to represent the other defendants?

MR. DOYLE: No, I'm not authorized to represent them, your Honor. I have really been able only to touch base in a very preliminary way with these stipulations. I think as Mr. Walker says a lot of them are areas that Mr. Segal probably has more concern with than the other defendants and I don't anticipate --

THE COURT: Yes, but of course it is a conspiracy case and absent getting the consent of everyone these stipulations aren't worth much, are they, Mr. Walker?

MR. WALKER: I agree with you, your Honor. I am working on that. One of the problems is that we have counand who are out of town.

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THE COURT: I should hope you will get these stipulations. In fact, I asked you to at our first conference in the case.

MR. WALKER: Right now I am in the position that the other lawyers are telling me that they are willing to but they want to look at the documents and one is Houston and the other is in Los Angeles.

THE COURT: I think if they are in good faith, they should get there and tell them to come. If they want to practice in this Court then it is their job to be here or delegate the function to someone else and you can tell them that I so direct it today and I see no reason why Mr. Doyle couldn't at least in the first instance enter into the stipulations on their behalf subject to their reviewing them I suppose within the first couple of days of the trial. If they have something different I want to know it and know it in a hurry so you can subpoen athe witnesses.

MR. DOYLE: Your Honor, this brings up one application that I did want to make to your Honor. Mr. James
Pappe represents Mr. Scardino and he was a member of the
Bar of the State of New York, but not a member of this Court.
His request is that I ack your Honor on his behalf whether
your Honor will permit him to try the case without having

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attorney who did practice in New York. He was here for two and a half years with the firm of Rogers & Wells and he is not practicing in Houston. Mr. Walker has had extensive conversations with him in preparation of this case. I don't think he has as yet appeared before your Honor and his specific question was whether your Honor's policy will permit him, if your Monor admits him for purposes of trying the case, to do it without having local counsel admitted to the Southern District.

THE COURT: I don't need anyone in the Courtroom, but I want someone in the Southern District to be co-counsel.

MR. DOYLE: I think arrangements have already been made.

THE COURT: I want someone ready and able to be here in the event that something would prevent Houston counsel from going on with the trial and also someone with whom we can communicate and can get here when we need him without having to get someone from Houston.

MR. DOYLE: I will convey that to him today, your Honor.

THE COURT: I would think that with his past association with the Rogers firm he should have no problem with that.

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MR. NEWMAN: If your Honor please, vis-a-vis the discussion regarding stipulations as to the admissibility of documents, et cetera, perhaps if some kind of a memorandum could be drawn up which could be-I intend to be there, but we do have counsel in Houston and in Los Angeles, but if some kind of memorandum could be drawn up it might be simple for me to call. I am rather close with Mr. Schermer and perhaps we can get an agreement that way. I don't know just how lengthy this is.

THE COURT: It is just a matter of if A were called from the XYZ bank, he would testify that these records are kept in the ordinary course of business and it is part of their regular course of business to keep the records and that is all.

MR. NEWMAN: If there is a memorandum, it will be much easier--

THE COURT: I don't understand.

MR. NEWMAN: If there would be some listing of the documents--

THE COURT: I don't see what that has to do with it. This has to do with the competency of the documents as business records. We can parade in a hundred witnesses here who will take our time unnecessarily.

MR. NEWMAN: I understnad, your Honor.

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THE COURT: Or we can just stipulate that if they were called this is what they would say. There isn't a ghost of a show, if that is so, of keeping the documents out on the grounds of incompetency. Albeit there might be other objections which you would in no way waive, objections to materiality, to relevancy, et cetera.

MR. WALKER: Yes. I think that should be made clear.

MR. NEWMAN: I understand.

THE COURT: It is just the matter of laying a foundation as to the competency, that is all. It doesn't help the defendants to bore the hell out of a jury with 100 witnesses saying these are records kept in the regular course of business.

MR. NEWMAN: All right. Thank you.

MR. WALKER: Thank you, your Honor.

THE COURT: All right.

MR. WALKER: Your Honor, one other thing.

THE COURT: One other thing I might say, if there are any questions on the voir dire I would like them in writing ahead of time.

MR. WALKER: We will submit them.

THE COURT: I would like them now.

MR. WALKER: Very well.

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MR. DOYLE: Will your Honor be in on Friday?

THE COURT: No, I don't expect to be in on Friday and it doesn't do me much good to get them then. I would think I would cover most of the material that is normally covered.

MR. DOYLE: I will try to be very brief and pointed in mine and if I can't get them to you by five, I will be very precise.

MR. WALKER: I will try to get them by five this afternoon.

THE COURT: I would ask the normal questions and it is not my practice to go into it too extensively on a voir dire.

Incidentally, we will pick six alternate jurors.
MR. WALKER: Very well.

The other thing is that of the nine defendants indicted, three have now pled guilty and one is a fugitive, so there will be five defendants we expect at trial.

THE COURT: I see.

Premark your exhibits.

MR. WALKER: We are going to make every effort to move it as quickly as possible, your Honor.

THE COURT: Very well.

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	TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, D.J., ON JA135
1	UNITED STATES OF AMERICA :
2	vs. :
3	HOWARD FINKELSTEIN, a/k/a :
4	ROBERT HOWARD, JACK LEVINE, : 74 Cr. 908 ANTHONY SCARDING, ALAN SEGAL :
5	and EDWARD ZUBER, :
6	Defendants. :
7	x
8	New York, December 2,3,4,5,6,9,10, 1974
9	Before: HON. LLOYD F. MacMAHON, District Judge.
10	District budge.
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19	STENOGRAPHER'S MINUTES
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1	jks JA136
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	UNITED STATES OF AMERICA :
6	vs. : 74 Cr. 908
7	HOWARD FINKELSTEIN, a/k/a :
8	ROBERT HOWARD, JACK LEVINE, : ANTHONY SCARDINO, ALAN SEGAL :
9	and EDWARD ZUBER,
10	Defendants. :
11	х
12	Before;
13	HON. LLOYD F. MacMAHON,
14	District Judge.
15	New York, December 2, 1974;
16	10.30 o'clock a. m.
17	(Room 706)
18	APPEARANCES:
19	PAUL J. CURRAN, United States Attorney for the
20	Southern District of New York; BY: JOHN M. WALKER, JR., Esq.,
21	JOHN SIFFERT, Esq., Assistant United States Attorneys,
22	Of Counsel.
23	FRED NEWMAN, Esq.,
24	Attorney for Defendant Howard Finkelstein.
25	JOEL WINOGRAD, Esq., Attorney for Defendant Jack Levine.

1	jks	2
2		٤.
3	JAMES PAPE, Esq., Attorney for Defendant Anthony Scardino.	
4	JOHN H. DOYLE, III, Esq., and	
5	JAMES P. HEFFERNAN, Esq., Attorneys for Defendant	
6	. Alan Segal.	
7	STANLEY GREENBERG, Esq., and RICHARD KIRSCHNER, Esq.,	
8	Attorneys for Defendant EDWARD ZUBER.	
9		
10		
11		
12 .	THE CLERK: United States of America against	
13	Howard Finkelstein and others.	
14	Government ready to proceed?	
15	MR. WALKER: Government is ready, your Honor	. `
16	THE CLERK: Defendant Finkelstein ready?	
17	MR. NEWMAN: Yes, your Honor.	
18	THE CLERK: Defendant Levine ready?	
19	MR. WINOGRAD: Yes, your Honor.	
20	THE CLERK: Defendant Scardino ready?	
21	MR. PAPE: Yes, your Honor.	墓
22	THE CLERK: Defendant Segal ready?	
23	MR. DOYLE: Yes, your Honor.	
24	THE CLERK: Defendant Zuber ready?	
25	MR. KIRSCHNER: Yes, your Honor.	

JA138 jks MR. WALKER: Your Honor, the Government does 2 have some applications. 3 I believe Mr. Pape, for Mr. Scardino, has an 4 application. 5 THE COURT: All right. I will hear the defend-6 ants first. 7 MR. PAPE: Your Honor, I would like first to be admitted for this case only in this District. 9 I am a member of the Texas Bar, a member of the 10 Federal Bar for the Southern District of Texas, and the 11 Fifth Circuit Court of Appeals. I am also licensed to 12 practice in New York State. And I would move for 13 admission for this case only. 14

THE COURT: Motion granted on one condition only, that you be here on time, ready to proceed when the Court is; all right?

MR. PAPE: Yes, your Honor.

Thank you.

THE COURT: All right.

MR. GREENBERG: Your Honor, may I be heard?

THE COURT: Yes.

MR. GREENBERG: My name is Stanley Greenberg. I am a partner with Mr. Kirschner, and we represent Mr. I would like to make a similar motion.

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I am a member of the Bar of the State of
California, State of Missouri, Supreme Court of the United
States and the District Court of the Central District of
California and the Ninth Circuit Court of Appeals.

THE COURT: Motion granted on the same conditions.

MR. GREENBERG: Thank you, your HOnor.

MR. DOYLE: Your Honor, on behalf of the defendant Segal I wish to renew my motion for dismissal on the
grounds of prejudice, actual prejudice because of delay,
because I have been advised by Mr. Walker that the SEC
never did subpoena the due diligence file so that as a
result of that and as a result of the delay in bringing this
indictment, we now don't have that evidence before the
Court.

THE COURT: Motion denied.

MR. DOYLE: Your Honor, I have a motion that the Government at this time make a representation with respect to the existence or non-existence of electronic surveillance with respect to any of the defendants or any of their premises.

MR. WALKER: Your Honor, I have been in touch with Richard Beckler in Washington. I am expecting a letter from him.

He furnished me with reports of several agencies which I have here. Although he said that he had not compiled a complete, a formal letter to send to me, the agencies that have reported to him have all indicated a negative response to the question whether any surveillance was placed on any of these defendants, and I can place on the record, I believe, the agencies which have reported, and I am told orally that no agency -- that there are no wiretaps in this case by the Justice Department -- and will make the formal letter a part of the Court's record when it arrives. I have been advised that the Department of Labor knows of no wiretaps, that the Chief Postal Inspector knows of no wiretaps, the Internal Revenue Service knows of no wiretaps, the Securities and Exchange Commission knows of no wiretaps, the FBI knows of no wiretaps, and the Secret Service knows of no wiretaps at the present time.

MR. DOYLE: Your Honor, I take it that that also includes electronic surveillance of any type whatsoever?

MR. WALKER: Yes, the inquiry included bugs, electronic surveillance of any type, including waretaps and bugs.

THE COURT: Your motion is that the Government elect -- I don't understand you, Mr. Doyle.

MR. DOYLE: No, the motion, your Honor, is that

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the Government make a representation today if it is prepared to with respect to whether there was any --

THE COURT: All right, the Government is under a continuing obligation, if at any time any wiretaps or electronic surveillance comes to its attention, through the exercise of due diligence, to disclose it at once to the defense counsel.

MR. WALKER: Yes, your Honor.

MR. DOYLE: Your Honor, there is a motion -- I would like to make a motion that your Honor review the grand jury minutes and dismiss the indictment on the ground that the interrogation was conducted in such a leading fashion with respect to the co-conspirator witnesses in this case and the co-defendant witnesses so as to deprive the grand jury of the opportunity of having the testimony given to them in a proper, admissible form.

I think analogizing this situation to the hearsay cases, that the Second Circuit has decided, the grand jury was entitled, at least, to be advised that it should have the opportunity to hear the witnesses tell the story in their own worlds.

I have reviewed the minutes of four of the defendants in this case already and each single defendant hardly had a chance to get a word in edgewise because of

the extremely egregious leading character of the interrogation in the grand jury.

THE COURT: Denied. I think the salutary

Costello rule which I had part in making is a good one, and if the cases in the Second Circuit be law, I don't think they apply to the motion you made.

MR. DOYLE: Your Honor, I have a motion also that the Court request the Government to make a representation as to whether any evidence was introduced before the grand jury either by way of testimony or otherwise, as to the criminal record of any defendant, because I noted in the interrogation of one of the defendants that a question was asked --

THE COURT: I will hear all your motions at 4 o'clock this afternoon.

MR. DOYLE: Yes, your Honor.

with a barrage of motions. Now, while we are on the subject, I will hear all motions at 4.30 in the afternoon, at the conclusion of the trial, as though made at the time, so that the trial will roll along without undue interruption.

I want you all to understand that. If you have some motion for a mistrial, I don't intend to listen to a chorus of argument out there. We will hear it at 4.30.

Now, the hours of this trial will be from 10 to 4.30. We will take a very short recess about mid-morning and by that I mean no more than 10 minutes, and we will take a very short recess of equal length about mid-afternoon, and I would appreciate it if counsel would be guided accordingly in their examinations and in their lining up of the witnesses.

We all have other things to do, and all of you do and, of course, I do, and to that end I would like to keep those hours.

My rulings on one motion will apply to all, all to whom it is applicable, so that there is no need for repetition there.

You have one motion I would like to hear, whatever it is, Mr. Walker.

MR. WALKER: Yes, your Honor.

Your Honor, at this time the Government would like to move for a very brief presentation on the record of the position of one witness, Jack McCarthy, who was subpoenaed by the Government and through his counsel has indicated to the Government that he intends to take the Fifth Amendment if called as a Government witness.

I would like to make a record of that fact if, in fact, it be the case, so that the Government may take

appropriate steps, if necessary, in obtaining immunity for him.

He is here. His lawyer is here. And at this point I would like to have this witness take the stand and represent to this Court what his position will be if called as a Government witness.

THE COURT: All right.

JACK McCARTHY, called as a witness by the Government, being first duly sworn, testified as follows:

MR. O'CONNOR: Appearing for the defendant,

J. Kenneth O'Connor, 400 Madison Avenue, New York 17.

MR. WALKER: May I proceed, your Honor?

THE COURT: Surely.

### DIRECT EXAMINATION

### BY MR. WALKER:

Q Mr. McCarthy, you are residing here in New York
City, is that correct?

A I do.

Q And you work in New York City?

A I do.

Q What is your address?

A Home or business?

# JA145

1	jks McCarthy-direct 11
2	Q Business.
3	A 400 Madison Avenue, New York City.
4	Q What is your home address?
5	A 27 Arleigh Road, Great Neck.
6	Now, Mr. McCarthy, you have been subpoenaed here
7	by the United States Government to testify in this case,
8	is that correct?
9	A I have.
10	Q And your attorney has represented to the United
11	States Attorney's office that if called to testify by the
12	Government you intend to exercise your privilege against
13	self-incrimination and to take the Fifth Amendment; is
14	that correct?
15	A It is.
16	Q Is that with regard to every question that would
17	be asked of you if You were called by the Government to
18	testify?
19	A Yes, it is.
20	Q If you were called by the defense to testify,
21	would you take the same position?
22	A Yes, I would.
23	Q Specifically, sir, if you were asked
24	MR. WALKER: Your Honor, may I ask the witness
25	several questions?

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THE COURT: Sure.

Did you, sir, in 1969 purchase Pioneer Development securities either for yourself or on behalf of someone else?

I refuse to answer on the grounds that the answer may tend to incriminate me.

Did you have any conversations with Alan Segal concerning Pioneer Development Corporation and the purchase of Pioneer Development Corporation stock?

I refuse to answer on the grounds that the answer to the question may tend to incriminate me.

Q Did you have any conversations with Gus Kostos. a registered representative at Orvis Bros. with respect to the purchase of Pioneer Development stock in 1969?

I refuse to answer on the grounds that the answer to the question may tend to incriminate me.

Mr. McCarthy, would you tell the Court why the answers to any of those three questions that I just asked you would tend to incriminate you?

MR. O'CONNOR: I don't think the witness is obligated to answer that question, Judge. I would like to note at this time, too, if Mr. Walker would tell me whether he is contemplating use immunity or transaction immunity when he applies for it?

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MR. WALKER: I don't think I need to make that position known.

THE COURT: I don't think so either, and I think he is entitled to know whether the witness is exercising his constitutional privilege in good faith.

I overrule your objection.

MR. O'CONNOR: Judge, if I might speak on his behalf, the witness has been the subject of a deep investigation with respect to his Internal Revenue returns for the year 1967, and it also involves the year 1970, which is the year of these transactions.

A special agent has been assigned to this and they have gone into this in extreme depth. There is now some civil litigation involved in the year 1967 for some hundred thousand dollars on a transaction that involves a judgment based on accountants' advice, as to how a transaction should be looked at.

Mr. McCarthy paid taxes on it, more taxes than the Government would have received, I think, under the theory that they were proceeding criminally on it, and they have been after him with a fine tooth comb.

Right now, they have investigators, FBI agents throughout Nassau, Suffolk, New York City, Jersey, since the spring of this year, again searching, finding, looking

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for some scintilla of evidence on which they can possibly indict him.

This is the Strike Force. This is going on right now.

It is our position that this move here for immunity and to put him on the stand here to testify about years where he has a substantial Internal Revenue problem, not an imagined problem, but a real problem, and the representatives of the Strike Force are not imagined, trey are real, currently operating right now -- to put him on the stand now, particularly with just use immunity, he has been -- he knows a little bit about use immunity in the sense that back in the '60s there were some wiretaps on his office for a number of months, and when there was a hearing by Judge Frankel at the end of the trial, it. developed that many of the case records that the FBI made were missing and, of course, the FBI did develop some evidence, but they said, "We didn't develop it from the wiretaps; we developed it from other means," which is the essential thrust of use immunity, so I think that under those circumstances this is not some imagined use of the Fifth Amendment, to just thwart the Government's use of his testimony.

THE COURT: With all respect for your answer.

Mr. O'Connor, I don't see why the witness can't give his reason.

Give your reason.

THE WITNESS: Well, the reasons are identical to those just stated by my attorney.

MR. WALKER: I'm sorry, could I have that read back?

THE COURT: He said the reasons were identical to those just stated by his attorney.

MR. WALKER: Very well, your Honor.

Q Mr. McCarthy, did you have a telephone conversation with me earlier this year?

A I refuse to answer on the grounds that the answer to that question may tend to incriminate me.

Q Why would the answer tend to incriminate you?

A I refuse to answer that question on the grounds that the answer may tend to incriminate me.

MR. WALKER: Your Honor, I would request the Court to direct a response.

THE COURT: I direct you to respond to the question.

THE WITNESS: May I have the question again?

THE COURT: Why would the answer to this question incriminate you?

# McCarthy-direct

THE WITNESS: Well, I think that telephone con-
versaion is tied directly to some of it, and the answers
to the questions during the telephone conversation are
directly tied to my problems with the IRS.

Q The question, sir, was did you have a telephone conversation with me, not what the content was.

THE WITNESS: Excuse me, I am directed to answer?
THE COURT: Yes.

A Yes.

Exuse me, I had a conversation with someone who called me and said they were Walker, Mr. Walker.

- Q And that was this year, is that correct?
- A A short while ago.
- Now, in that conversation, sir, did you discuss purchases of Pioneer stock by you or members of your family?

THE WITNESS: Do I have to answer?

THE COURT: Well, you are directed to answer or invoke the Fifth Amendment.

A Well, my position is the same. I refuse to answer on the grounds that the answers may tend to incriminate me.

THE WITNESS: Excuse me, I am just a little confused as to whether the direction is for the rest of them or just one at a time.

THE COURT: You have got a lawyer there, a very good one, Mr. O'Connor. I am sure he will guide you.

MR. WALKER: Your Honor, I ask for a direction of the witness to answer the question as to whether or not the telephone conversation that he had with a person whom he believed was Mr. Walker dealt with purchases of Pioneer stock by him or members of his family.

MR. O'CONNOR: Judge, I think the witness has already indicated why he doesn't want to discuss the content of that telephone conversation. The answer bears directly on some problems he has with the IRS.

THE COURT: I think that is a sufficient explanation.

MR. WALKER: Very well, your Honor.

At this point I have no further questions of this witness. I would, however, like to make a representation to the Court, either under oath or just a representation in court to the effect that I did have a conversation with Mr. McCarthy. I called him up. I spoke to him and during that time he discussed Pioneer Development purchases with me over the telephone and made representations to me concerning purchasesd of Pioneer Development stock.

Would you accept my representation of that with-

## McCarthy-

out my having to testify to that?

MR. O'CONNOR: Yes, sir.

MR. WALKER: Then on that basis, your Honor,

I would suggest that this witness has waived any Fifth

Amendment right by communicating to the Government in a

telephone conversation, which he has admitted to on the

stand, matters pertaining to the Government's case, in

connection with the purchases of Pioneer Development stock

and accordingly the Government's position is that we are

free to inquire into this matter with this witness and

that he has waived his privilege.

MR. O'CONNOR: I think. Judge, for someone to have to waive his rights under the Fifth Amendment it has to be a knowing, conscious waiver. This was a telephone conversation which apparently just came in, some man represented himself to be a representative of the United States Government --

MR. WALKER: I did, and you have agreed to my representation.

MR. O'CONNOR: I know you said you did, but I don't know that Mr. McCarthy at that time, when he was on the telephone, knew who he was talking to.

I don't know that you got the correct answers.

I don't know, he may have given you misleading answers, not

THE COURT: I don't know why you people can't

give a judge a halfway decent break without constantly

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delaying the trial.

I had a pretrial conference with you two months ago and advised you of these things at that time. These are just inexcusable. You keep a hundred people waiting here. I don't know who lawyers think they are, that they have the right to impose on the public in that way.

The legal profession is in a bad light enough without making it worse.

(Handed to Court.)

THE COURT: It just gives me all kinds of duplications, so I suggest you listen if I have omitted, for example, some name on your list that is not on the Government's, all of which takes time to correlate at this point.

MR. WALKER: Your Honor, with respect to this witness, I would ask that this witness be excused, that Mr. McCarthy be excused subject to the direction of the Court that he be told he is still under subpoena, and that he be made available to testify in this court if required, subject to your Honor's ruling, subject to whatever steps the Government may take, in light of that ruling, and that he be directed to appear upon a telephone call to Mr. O'Connor by the Government.

THE COURT: I so direct you.

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You understand?

THE WITNESS: I do.

THE COURT: All right.

MR. O'CONNOR: Thank you, sir.

THE WITNESS: Can I go now?

THE COURT: Yes.

(Witness excused.)

MR. DOYLE: Your Honor, I have an application that your Honor, in your discretion, grant the defense jointly 20 peremptory challenges which we are prepared to exercise jointly.

MR. WALKER: Your Honor, may I be heard?

THE COURT: Yes.

MR. WALKER: The Government is limited by law to six, unless the defense consents to extra challenges.

I have no objection, in principle, with the defendants receiving additional challenges as long as they will consent to the Government's receiving a proportionate number, but apart from that, I must object.

I think that that would be -- if they are not prepared to consent to the Government's getting additional challenges, we would oppose any such additional challenges.

THE COURT: I am opposed to it anyway. I will give the defense two additional challenges to be exercised

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jointly and none to the Government.

MR. DOYLE: Your Honor, secondly, with respect to conferences among the various counsel for the defendants in deciding how to exercise the joint challenges, could we have the Court's permission to retire to one of the separate rooms outside the courtroom in order to do that, just because of the mechanics of he dling together in a small space in the courtroom in front of the panel and the difficulty of having an intelligent discussion with respect to the panel under those circumstances?

THE COURT: Is it agreeable with everyone that Mr. Doyle act as lead counsel?

MR. DOYLE: Your Honor, excuse me --

THE COURT: Is it? Would it be agreeable?

By that I mean simply that he be the one to signal me that you need a conference, that kind of thing, lead counsel.

MR. PAPE: Yes, your Honor.

MR. WINOGRAD: Yes, sir.

THE COURT: All right, if you need it, but I ask you to restrain it. I don't intend to be here for three days picking this jury. There is no excuse for it.

So with that admonition, fine.

MR. DOYLE: Yes, your Honor, we will do everything we can to expedite it.

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iks THE COURT: To that end we are use the robing 3 room right back here. MR. DOYLE: Thank you. 4 MR. WALKER: There is one other application, your 5 6 Honor.

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Before your Honor took the bench this morning, I spoke to your clerk, who indicated that you bed interpreliminarily, anyway, to have three alternation so here in the well next to the witness box.

Your Honor, could I suggest, make a suggestion that perhaps, after the jury is seated, that jurors could sit up -- at least two jurers could git up on the platform itself, and perhaps the third could sit somewhere else, so that he is not obscured from the view of the courtroom?

It seems to me that the jury box can accommodate five alternates without too much of a problem. The sixth does pose a problem.

Alternatively, I would ask that maybe we just proceed with five alternates.

THE COURT: I'm sorry, Mr. Walker, we gave a lot of thought to it the other day. It works out better the way we have planned it.

MR. WALKER: Very well.

THE COURT. I plan to pick six alternates.

MR. PAPE: Your Honor, I have one brief motion that I would like to take up with the Court before the tria, commences.

I think that the evidence will show that Mr. Scardino was in Reno, Nevada during most of this period because he was working at the Riverside Motel.

I think that there may be evidence also that the Riverside Hotel in Reno, Nevada, was purchased by --

The COURT: I will hear you at 4.30.

MR. PAPE: Thank you.

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(A jury and six alternate jurors were duly impaneled and sworn.)

THE COURT: All right, we will take a luncheon recss now until 2.15. When you come back, go right into the jury room and don't talk about the case, don't let any body talk about it with you, and if anybody should attempt to talk about it with you, you must report it to the Court.

Now, during this trial, those instructions are to follow at all times.

Don't even discuss it among yourselves. Don't discuss it with anybody home. Don't read anything about it. Wait until all the evidence is in and the Court has given you the final instructions.

Have a nice lunch.

(Jury left the courtroom.)

THE COURT: All right, we will take our lunches. recess. 2.15.

Mr. Walker, have your witnesses here ready to go

MR. WALKER: Yes, your Monor.

(Luncheon Tecess.)

## AFTER ON SESSIC

2:15 P.M.

(In the robing room.)

and I don't know who it is and I don't want to know, has acre
motion he wants to make. I think I more it perfectly
clear this morning that I will bear motions at 4:30 in
the afternoon, as though made at this time. I have no
intention whatever of being met every morning and after
lunch hour and every racess with a barrage of motions.
That is clear. I won't hear any motions at this time.

(In open court, just not present.)

THE COURT: I want no interruptions during opening statements, none.

(Jury present)

THE COURT: All right, Mr. Walker.

MR. WALKER: Mr. Allen, ladies and gentlemen of the jury: This is a case of stealing from the public.

Those defendants are charged with selling and distributing virtually worthless stock to the public in a company called Pioneer Development Corporation, a company without earnings, a company without revenues, and a company without any meaningful production. The targets of this stock distribution, the virtual transport public who

got stuck with worthlass short, which we purchased from the defendants at prices ranging from as high as six to 3 nine dollars a share. The goal of these defendants was to 1 take money while the public was led anto believing that 5 the stock it was buying from them was worthwhile, and that there was really an active producing company behind 8 the stock. Indeed, the proof will show the contrary, that 9 this company was not active, that this company was not producing remenues, it was not producing earnings, and the 10 the most that could be said for this commany was that it 11 12 had a hope that a mineral mine would come into production some time in the future. I am the Assistant United 13 14 States Attorney in charge of this case. My name is John 15 Walker. I will be assisted throughout this trial by John 16 Siffert who as also an Assistant Walted States Attorney 17 who will be helping me with the prosecution. It is our 18 honor, and our privilege to present this case to you on 19 behalf of the government. This is an important case. It is 20 important to the defendants because they are charged with 21 very serious offenses. They are charged with conspiracy, 22 some of them are charged with selling unregistered stock, 23 and I will have a few words to say about unregistered stock 24 in a minute, they are all charged with occurities fraud 25 and with using the B .ted Smales chile to perpetrate a

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scheme to defraud. This is an important case to the govern ment because it is the government's responsibility to see to the endorsement of the securities law, laws which were enacted to protect the small, immocent, unwary invest and also to see that the laws against mail fraud are enforced In addition, it is the government's responsibility to enforce the laws against criminal conspiracy, a combination or acting together of individuals in furtherance of a criminal objective, and there is a criminal conspiracy charge here, and all of these defendants are charged with criminal conspiracy. The statement that I am giving to you at this moment is not evidence at trial, and it will be your job to sift and to weigh the evidence as it comes in. The evidence will come in from that witness chairright over there in the form of Live witnesses and in the form of documents and also perhaps you will get evidence in the form of stipulations, that is agreements between lawyers as to what the facts are. This opening statement is not evidence. It is merely a roadmap or in outline of what the government intends to prove in this case. Similarly, if the defense lawyers choose to give opening statements. their opening statements will not be evidence for you either Those statements will enrely be a presentation of their positions on this cas and mill not be evidence for you.

1 2 Your job will be to listen to the little and to observe 3 the wichesses, to observe the documents that come into 1. evidence, and then thee these facts are prevented to you 5 and the trial is over, the actual total, the presentation of the facts, the largers will have an opportunity to sun up their version of the evidence to you, present their views on the evidence, and the court will present a version 9 will give you a law that you are bound to follow in decion. 10 this came, and the came will be yours to decide. It will 11 then be that you will be performing your duties as citizens. 12 which is to consider the evidence and to reach a verdict 13 in this case. This case is not complicated. Although 14 there may be a few new terms to some of you dealing --15 terms dealing with the business community, these terms 16 will be explained to you as time good or, and you shouldn't 17 be puzzled if perhaps you hear a torm or two that you 18 don't understand at the present time. As I have outlined 19 the case to you so far, you can see it is not going to be a complicated case. You will hoar the torm registratic, 21 statement here. There will be evidence produced that when 22 there is a distribution of stock of a company to the 23 public by an underwriter, a registration statement must 24 be field with the SIX except in exceptional cases. In this 25 case no registration into the was taled with the SEC.

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the government will prove. The value of a registration . statement, you will hear evidence to the officet that the public then is informed of the facts which are contained in the registration statement, and when a stock is issued and a registration statement is filed with the Securities and Exchange Commission, that puts the public on notice as to facts which are contained in that registration state. ... and gives the public an opportunity to see what the facts are about the company whose stock is being offered. In this case, one of the charges here is that some of these defendants acted using the mails and using interstate commerce in transporting stock and in selling stock without a registre in statement being in effect. It will be the government's-the proof will show that because no registration statemen. was in effect, the public was deprived of the opportunity to study and evaluate the real worth or lack of worth of this company. You will also hear the term stock certificate. Stock certificates will be offered in cyidence. A stock certificate, as some of you may kno , is issued by a company in order to raise capital for it. It evidences ownership of a portion of that company. The stock certificate in Pioneer Development Corporation you will see when you are such a stock ertificate appears to be very similar to a stock certific a it any other number of company,

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such as General Motors or other companies. Therefore, you will see the ease with which the public can be misled in a sale or distribution of stock, unless they are aware of what the company is really like, and it is the securities laws that require people who issue stock and who distribute stock to make sure that the public is not misled, to file registration statements and to be honest in their dealings with respect to the distribution of stock so that the public will not suffer. The evidence, the government contends, will show that these defendants were not honest in their dealings, that they distributed stock to the public at artificially inflated prices which were if effect manufactured prices, and that the public bought stock at these artificial prices, and it was led to believe they were getting something of value when in fact they weren't. Cur proof will take us back into 1969. In early or mid-1969 two men, Durrey Acton and Michael Clegg, were partners, and they through a history of business dealing in early 1969 had acquired a very large amount or had control over -- could get their hands on a very large amount of Pioneer stock, the stock of Pioneer Development Corporation.

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Now, as of the summer of 1969, when they had all of this stock, the company had virtually no meaningful assets.

There was, apparently, a handshake arrangement with an individual who had some mining claims that these gentlemen hoped to pur into the company but the company itself was virtually dormant; it was producing any revenues; it was not producing any income; and it was not producing any goods or materials.

This situation, the evidence will show, never The company never produced revenues, never produced earnings and never went into production, and yet the stock was being sold to the public at 6 to 9 dollars per share.

Now, in the summer of 1960, when Acton and Clegg had control of this substantial quantity of stock -- and you may believe, the proof will show it was in excess of 150,000 shares out of a total of 500 some-odd thousand shares issued and outstanding by this company -- that when they had control of this stock, they wanted to raise money with it, and at that time, the proof will show that the defendant Scardino, who is sitting over here, introduced the defendant Segal, sitting over beta, to these two gentlemen, and Mr. Segal to i these gentlemen that he would have

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no problem raising mency for them, and he asked them to tell him facts that they believed would be useful to him in promoting this stock, in selling the stock off to the public, and they agreed that Mr. So al could have a substantial amount of this stock, take it to New York and make a market in the stock and raise the price of the stock in that market, and then with that stock price raised, remit funds to them, so that they could develop certain mining claims that they had.

The proof will show that Mr. Segal remitted to them only a very small amount of money and that essential Mr. Segal took this stock to New York, made a market in the stock, the price of the stock went up, largely through the activities of Segal, at 6 or 9 dollars a share, and no money was returned to the company. And it was that money that Acton and Clegg were depending upon to get what ever they could in Pioneer off the ground.

Now, the testimony will show that they gave Mr. Segal approximately 111,000 shares of stock to bring to New York and that 85,000 shares of this stock Mr. Segai had registered -- not registered, excuse me -- had placed by the transfer agent of the company into the name of his secretary, not his oin name.

And he also brought 26,000 shares of stock to

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New York in the names of three other individuals, stock which Segal had told Acton and Clegg he would sell off into the market in a calculated, careful way, so as not to hurr the price of the stock, which he intended to raise.

None of the proceeds of this 25,000 shares of stock was remitted to Acton or Clegg or to any of the individuals who owned that stock.

Now, Mr. Segal also exacted a promise from

Acton and Clegg, and those associated with them, that of

the stock that they held, they would not sell that stock,

and the reason he didn't want them to sell that stock, the

proof will show, was because he wanted to be able to control

the price of the stock, control the market of the stock,

and that if stock was sold into the market, it would knock

the price down of the stock, because it is the law of supply

and demand: If there was too much supply, then the price

would drop; and so he asked Acton and Clegg to keep stock

off the market so that it wouldn't destroy his efforts to

fix a price and have an artificial price in the market.

Now, the proof will show that Acton and Clegg, when they didn't get the money from Segal, in about October of 1969 or early November, as planned, decided to take their own stock and pledge at at banks, take it to banks and try to get money from the a banks, using that stock as collateral

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a loan to you, using that stock for collateral, and if you don't repay the loan, then the bank believes that they can sell off that stock and cover the debt that way.

Well, this is what Acton and Clegg decided to do with some of the stock that they had.

Now, this was largely stock in the name of a man by the name of J. Walker, no relation to myself, and also they took other stock, and they placed it in the name of Anthony Scardino, this defendant here in court, and they gave Mr. Scardino some of this stock, approximately 11,000 shares, to take and to borrow on, and Mr. Scardino, the proof will show, did not borrow on this stock, but he sold it into the market, and he took some of the profits of this stock for himself.

He asked Acton and Clegg if he could have some of the profits because he needed it for other business, and he took many thousands of dollars for himself of this stock.

Now, in addition, Mr. Scardino had an associate, a man named Richard McKibbon, who is not here today, and Scardino and McKibbon acted together in agreeing not to sell the stock, but then in ending up selling the stock and together, between Mc bbon and Scardino, 29.000 shares of

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Pioneer stock was sold to the innocent public.

when Segal found out that this stock had been sold and that there was a breach developing in the agreement, in the compact that he had with Actor and Clegg, he got upset, because in order to support the market he had to buy some of this stock, in order to keep this stock from lowering the price, and in December, late November, December, Segal ended up buying substantial quantities of stock or placing stock away from the market, and the stock that he was placing, a lot of it was this stock that had been sold by NcKibbon and Scardino.

Now, the McKibbon and Scardino sales took place through the firm of Hornblower, Weeks in Denve, Colorado.

Segal got very upset at this, and he felt that the money that had been obtained through the sale of this stock had to be shared, that this money, a large portion of this money belonged to him. So he spoke to an individual named Mike Gardner and explained his problem, and Mike Gardner arranged for Robert Howard or Howard Finkelstein -- he has two names -- this gentleman here, to straighten out the situation.

Finkelstein arranged -- met with an associate of his, a man named Ed Zubez, this gentleman sitting over here, and the two of them arranted for a meeting in Reno

Nevada, at the Holiday Inn, between Christmas and New Years of 1969.

The purpose of this meeting was to recover money from Scardino, McKibbon and anybody also who had sold stock and to enable the Segal group in New York to get a portion of the money that Segal believed was due him pursuant to the agreement and arrangement that existed initially between Acton, Klegg and himself.

You will hear evidence about this Reno meeting and what went on there, and as a result individuals,

Scardino and McKibbon, did agree to remit certain moneys back to the New York group of Segal, through Zuber and Finkelstein.

Now, the testimony will show that while this is going on there were efforts being made by Segal to keep theprice of the stock up. Segal was doing this throught various manipulative devices. He was doing this by trying to create demand in the stock and he created demand by telling people that if they bought stock, they wouldn't lose any money because if the stock dropped, he would make good their loss, and that caused people to go in and buy stock.

He also cheated demand in the stock through an associate of his, a wan named Jack Levine. this gentleman

sitting over here in the blue suit, and Mr. Jack Levine,

a defendant in this case, spoke to people about the stock,

told them it was a great company, that it was a good buy

in the stock, and caused innocent, unwary investors to go

into the stock, believing that it was a great thing.

And the evidence will show that individuals who bought stock on the representations of Mr. Levine lost tremendous amounts of money, many thousand and thousands of dollars.

Now, the evidence will also show that after this meeting in Reno between Christmas and New Years, 1969, further efforts were made by the members of the conspiracy to use this Pioneer stock to try and raise money. After all, they had something here that looked like it was worthwhile; run around and sell it, see if you can take it to a bank, get money on it, try to trade it for things, maybe you can sell it off and get some money.

And the evidence will show that there was a trade of some fur coats for Pioneer stock, that Mr. Zuber and Mr. Howard went to a furrier in New York and that they gave him Pioneer stock in return for valuable fur coats.

There will also be evidence that more in the spring of 1970 Mr. I kel stein arvinged for a man named

Mike Karfunkel to buy 10,000 shares of Pioneer stock and the proceeds of that stock, some \$15,000, he took a fair percentage of it, he took approximately a third of it for himself and put it in his pocket, and the other \$10,000 were remitted to Acton and Clegg.

The evidence will show that these defendants, in acting together, were aware of this effort to fix the price of the stock, to have this artificial market in this stock and then sold off stock or arranged to sell off stock or participated in selling off stock in order to line their pockets.

And you will hear evidence of the many thousands of dollars that went into some of these defendants' pockets as a result of this conspiracy.

Now, ladies and gentlemen, this is a criminal trial and it is not a game, despite what you may have seen on television. This is a serious business, and the Government is putting forward very serious charges, because in the Government's view the proof will establish these charges before you.

of the evidence presented to you and not on the basis of anything else, and not on the basis of speculation, sympathy or bias or prejudice but on the basis of the facts as they

come in here and as they are presented to you, and on the basis of the law as the judge gives it to you.

Ladies and gentlemen, at the conclusion of the evidence I will have a chance to address you again and at that time review the evidence with you in a summation and, at that time, ladies and gentlemen. I will ask you to return verdicts of guilty against all of the defendants here on trial as to the counts with which they are charted

THE COURT: Mr. Nevman.

MR. NEWMAN: If your Honor please, the defendant attorneys have agreed that Mr. Doyle will open first.

THE COURT: All right.

MR. DOYLE: Thank you, your Honor.

May it please the Court, Mr. Foreman, ladies and gentlemen of the jury, Mr. Walker, fellow counsel and defendants:

My name is John Doyle and I represent the defendant Alan Segal, who is seated on the table directly opposite where I am looking now, seated to the left of me as I am seated at defense counsel.

It is my job and my responsibility to present

Mr. Segal's defense to you and that defense can be summar
ized by two very basis concepts: good faith and innocent

intent. Good fait because Mr. Segal, as did many other

in good faith that Pioneer Development Corporation was in the processs of acquiring and had, in fact, acquired by the middle of the fall of 1969 an extremely valuable mining claim, a mining claim that they were told and as reflected in reports, substantial sums of money had been offered for by other business organizations, a mining claim that was the subject matter of very extansive negotiations with the technical inventors and developers in Nevada, who were going to develop the mine, and you will hear a little bit more about that later on in my opening statement.

There was good faith in another respect on the part of Mr. Segal. He had a good faith belief that it was perfectly proper to trade this stock, to sell it through a brokerage house that was registered and regulated by the National Association of Securities Dealers, and by the Securities and Exchange Commission.

and proper to permit such a broker-dealer to trade the stock with other professional broker-dealers which, in fact, is what happened in this case, and you will hear about what are called the pink sheets, which are the sheets where one broker-dealer expresses to other broker-dealers what is called a bill price and and ask price, where a

broker-dealer says, "T offer to pay \$5 for a certain share and I offer to sell a certain share for \$6."

This is how broker-dealers earn their income.

If they act as dealers, they buy and sell for their own account. And much of the trading in Pioneer Development Corporation was by dealers for their own account, trading in it, making money on the trade.

Another way that broker-dealers earn income is by earning brokerage commissions and executing transactions for their customers.

But the general public doesn't look at the pink sheets. They don't see these pink sheets. They see broker-dealers. They see persons who are regulated, who have a duty of disclosure, who have a duty of inquiry to the SEC and to the Government.

Mr. Segal believed in good faith that if an accredited, registered broker-dealer accepted Pioneer Development Corporation as a tradeable stock, put in a quote in the pink sheets, and if a demand for the stock thereafter developed, among other professionals, that this was perfectly proper, that it was no crime.

Finally, there was no fraud in this case.

There was no intent on the part of Mr. Segal to rob anybody of a single penny. Mr. Segal believed in this company

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as fervently as anybody else believed in it.

This is not a case of fraud. Nor is it a case of artificial manufactured prices of a stock.

This is a case where there were willing buyers and willing sellers, where a broker dealer put quotes into the pink sheets, and where other brokes-dealers either acting on their own behalf or on behalf of customers entered into agreements to buy and sell at those prices, and those prices were agreed upon. We are dealing here with a negotiated market. If A agrees to sell to B, then we have a price that they have agreed upon, which is not manufactured which is not artificial, and if Mr. Segal may have conveyed information to Mr. Levine and indeed, Mr. Levine, you will hear, mer Mr. Lamb, who is the owner of the mining claim, Mr. Lamb, whose brother is the sheriff of Las Vegas and has been for 30 years, whose other brother is the senior State Senator of Nevada, and the present of the bank in Reno -- Mr. Levine and Mr. Segal both met Mr. Lamb and they both believed that this mine was valuable. So that if Mr. Segal said to Mr. Leving, "I think this is a good company. I think that if you had money or could borrow money, you should invest in it. You have heard Mr. Lamb discuss it. You ave heard Mr. Acton and Mr. Clegg discuss it," and if r. Devine passed along in good faith

to other persons his belief in the company, there is no fraud, there is no crime.

If they are mistaken, if they are negligent, then, in the light of hindsight, perhaps it was unfortunate that it happened to them and it may be unfortunate for certain other people that they spoke to, but this is not criminal conduct. This is not a fraud. There were accrimes committed in this case by Mr. Segal.

Now, the opening statements are not an attempt to summarize all the evidence or to tall you everything about what the evidence in the case will show, but just to paint with a broad brush the nature of the case and what you are about to hear.

Let me just tell you a few of the things that the evidence will bring out about the belief that Mr. Segal had in the mining claim and the basis for that belief.

Mr. Clegg and Mr. Acton gave to Mr. Segal a substantial amount of technical material about the mine. There was an economic feasibility report on the mine prepared by a Mr. Lat. Ag, who lives in Docatello, Idaho.

There were materials in offices by the Howard Hughes organization to pay or offers g to pay many millions of dollars for this mining claim.

There was indeed a whole sheaf of

documents that Mr. Acton and Mr. Clegg gave to Mr. Segal, that Mr. Segal was impressed by, and he doesn't have technical, geological knowledge, but from what he saw, it looked valuable, and he gave it to his attorney, Mr. Schiffman, and Mr. Schiffman, in turn, gave it to his client, Karen Securities Company, and Mr. Segal understood and believed in good faith that if "aren Securities Company when given this material, which will be referred to during the case as the due diligence file on the company, was the basis to the satisfaction of Karen & Company, that he could put in quotes in the pink sheets, then it would be proper for Karen Company to go ahead and do it and for the stock to be traded.

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Mr. Walker told you about how important this case is for the government. However, it was not important enough for the government to move recordly in its invest, gation of this case and its presentation to the grand ju. so that the charges in the case were not brought until about four and a half years after tasse events happened, even though they were all known to the Securities and Exchange Commission very early in 1970. This doesn't mean under the law that the government is not entitled to bring the charges, but it does mean that some of the evidence that you would all like to see and coming is determining the question of belief and good faith, which is the defen. in this case, is not going to be available. You are going to be told that Mr. Azzerone, who was the person at Karen & Company who first put the bids into the pink shock that Mr. Azzerone saw this file but can't account for its whereabouts. It was not subpoended from him by the Securities and Exchange Commission, even though he was called as a litness, and he doesn't know what happened to he If this case had moved more promptly, we would have been able to present that to you for our Octonso. But we will be able to present some evidence. The of the persons that Mr. Lamb, the owner at the mining cosins, told Mr. Segal was an important fact r bore was Moren Defining. ONLY COPY AVAILABLE

is an inventor and be invented a process for disintegration, ore at a mine site, and this was revoury ore, involved 3 in this mine. Mr. Buttram was brought into this picture fairly early by Mr. Acto; and Mr. Clegg. They had numerous 5 meetings with Mr. Buttram about putting his equipment in 6 in Mevada at the mire site, they had numerous conversation. At one point in the middle of January, 1970, Mr. Segal 8 9 made a special trip to Los Angeles to meet Mr. Buttram at his request in order to satisfy himself that efforts 10 were really being made to got the wine operating. So a 11 mosting was held at the Los Angeles Invernational Airport 12 where Mr. Segal met Mr. Butteram and Mr. Butt am explained 13 14 how his process -- which is called a cally process, the 15 Cully ore disintegrating process -- works, and he assured 16 Mr. Segal that the process could be installed at the mine 17 and that it would work. Mr. Segal was impressed by Mr. 18 Buttram, as I think you will be impressed by Mr. Buttram 19 when you hear his teraimony. After conforming with Mr. 20 Buttram, Acton and Clagg later actually ranged funds. Mr. 21 Acton borroad from a person il frie d about 64,500 and pard 22 it to Mr. Buttram. W. Buttram actedly gov his equipment 23 located out of the mi a site. Mr. Be bram will have photo-24 graphs of the mine sin, he will have some concrete evidence for you, not all the different that you would have had if ONLY COPY AVAILABLE

Mr. Awarache hadn't loat the due diligence "le, but you 2 will have concrete evidence that this was no fake, this 3 was no phony. This was a time when mercury ore was expensive 4 and highly priced. The price has gone down since then, but hirdwight doesn't concern us here. You will see and 6 hear that avidence. With respect to Mr. Seral's good far to 7 belief in the propriety of the trading that went on in the case, you will see that there were very reputable firms associated with this stock, you will see that the transfe. 10 agent of the stock, that's the company to whom all the 11 12 stock certificates and sent, that transfers the stocks from 13 the names of the old owners to the names of the new owner. 14 that the transfer agent was a very reputable established 15 firm in Reno, the Nevada Agency and Trust Company, a well 16 respected institution. They didn't may to anybody that the. 17 was anything wrong with the trading and transfer of this 18 stock. Firms such as formblower & Weeks, First Philadelph. 19 and about a fozen other firms, were not only aware that 20 Pioneer was being traled from broker-dealer to broker-deal. 21 and sometimes from customer to customer, but they traded 22 it themselves, these equilated firm s with duties of inqui-23 and none of them said to Mr. Segal or to Mr. Levine or 24 anybody else, "Hey, " it a minute, there is something wrong 25 here. This should have been regioned, the should have been

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filed with the SEC." That revert opened. Ask yoursel a this: If Mr. Segal had any criminal intent, if he had any knowledge that he was violating the law, would be have provided his colf to be associated such the distribution or the rule of stock that would pure visibly through the hands of so many respected, so many osmoblished and regulainstit fiens, with responsibilities of disclosure to the SEC and to the government? Some of the accounts, you will hear, wore is Mr. Segal's own name, so e of them were in the name of our persons, owned beneficially for him, which he freely admitted when he was asked about it. There was really no servecy whatscever in Mr. Secol's issociation with this wenture. Would be ever have a ken the risk of a .i. this if he coar had any concept that there was anything illegal about it? Mr. Walker didn't mention something to you that the witnesses will, which to really quite important on this who e point of Mr. Segal's good faith bolica in this case, his innocent intert, because this was a company that was in corporated in Mevada in 1918, and it had a large number of existing chareholders. Under the law as it existed then and as it still exists, the stock that was in the hands of those preexisting or those or shareholders was free v tradable. They could buy and sell that stock to other a there of the public, and it didn't

have to be registered with the Scouribles and Exchange Commission. We have a technical packlam under the law, a Judge MacMahon will charge you, that where there is a distribution by a small group of people who acquire a contain amount of stock, then the law can be interpreted to require that that stock by registered with the Securiti. and Exchange Cormission. But I'r. Segal didn't know or understand that that applied in this case. His underst ite and his belief was that because this was an old preestablished company, the more fact that the old shares were gold to new poorle who then tore celling them to think people didn't require registration. To other words, he acted in the affirmative belief the because of what is called in the colloquial terms of the business men who talk about it, the grandpappy clause, is believed that there vo. nothing wrong with proceeding the war he did and therefor he did not have any criminal intent and respect to registration of the same. Finally, ladies and gentlemen. there has been a gree, deal of hindwight by the government in this case from the fact that Picacor Development Corporati tion did not succeed s a compensio wenture, from the fact that certain investor weren't able to sell their shares for what they had pro for term, alendigh and were. From those facts the gove-

show that Alan Segal believed in what he was doing, that when he purchased shares, and he did purchase shares of Pioneer, he purchased that because to believed it was a good company, as did many other gapple, and people who act in good faith with innocent intent do not commit crimand I submit to you, ladies and gentlemen, that you will find on the basis of the swill mee Mr. Segal not guilty. Thank you.

ARE KIRSCHMEN: May to plotte the Court, ladies and gentlemen of the fury, counsel or the federse, counsel for the government, my note is R chard Firstmaner. My partner's name is Stealey Graceberg, he is citting at the end of this table. Together we represent Mr. Edward Zuber sitting right here. First of all, you may wonder why Mr. and is being represented by two lawyers today. The answer to that is simple. I have certain commitments that require me to be away from the trial during the course of the trial. If that occurs, Mr. Greenberg will take over for me. At that juncture of the trial, both the defease and the prosecution are each lives as appearingly to make a brief opening statement to the Purpose of the care, to tell you that we believe the symopsis of the care, to tell you that we believe the criffered will show during the course.

of the trial. There are some things that I believe Mr. Walker and myself agree on right now, and the of them is that you have heard no evidence had because what Mr. Walker stated to you is marely who Mr. Walker hopes the evidence will show during the course of the trial.

Keep in mind that Mr. Walker was not present during the conversations, the alleged meetings and the activities which he described to you. He was merely talking you what he believes the evidence will show during the course of the trial. There are some principles about I would like to repeat to you, not because I can say them any more clearly than the court has said them to you dready, but because they are fundamental to our system of justice and they are fundamental to the assurance of a fair trial in this matter.

you, but leave the law to the court.

has referred to the defendants, these five gentlemen, as a group, "These people," these individuals." These are five human beings on trial. You must decide the guilt or innocence of each to of them separately. It is not a band. To is not a count, it is not a group. It is five human beings who are this you to treat them fairly, who

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are asking you to treat them he have you would have them treat you if the roles were reversed. Remember, the evidence against each of them will be different. Therefore, the evidence against each should be segregated by you and you should weigh the evidence against each individually. Don v lump the defendants begether. What is this case going to be about? We'll, it counds as if we are going to be talking about an essentially twentieth contury phenomenon, the same market: how it operates, how dealings occur on it, and it is a very sophisticated facet of our business world. The evidence will demonstrate to you that W. Zuber had nother; to do with this complicated business world. He did not knowingly participate in an adleged stock manipulation. As a matter of fact, when this alloged stock manipulation occurred some five years ago. Mr. Zober was under 30 year. old and he had had no experience at all with this complicat business wold. The evidence will deminstrate that Mr. Zul did two things. The first thing that he did is he attempted to collect some money for a person in Reno, 'evada. That money had been withheld and that money was from the sale of some Pioneer stock. The next thing he did, about 10 or 15 days later, he acted as a finder which means he put a buyor for Pioneer - rock together with a seller for Pion. stock. We didn't own the stock. There's that he did. That is

is criminal. Mr. Zuber was told all of the things that you have heard Mr. Dovle speak of with respect to the mine and the viability of the corporation and the fact that it had a brilliant future. Mr. Zuber had nothing to do with a great number of things that Mr. Walker has talked about and which the indictment alleges. He did not acquire control of the stock, he did not establish an artificial market for the stock. He did not manipulate the price of the stock. He certainly did not obtain many hundreds of thousands of dollars. Indice and gentlemen, once the evidence is in I demonstrate but it will show that Mr. Zube is guilty of nothing. Thank you.

Mr. Walker, Ur. Levine, Mr. Allen, Ledies and gentlemen of the jury. My opening statement is going to be short, consise and to the point. When Mr. Allen made his opening statement he mentioned my client, Jack Levine, for approximately 18 records, and he said that Jack Levine, an associate of Mr. Sigal, represented to people what a great company andwhalf a good stock floreer Development. Corporation was, Absolutely true, Indies and gentlemen, what I am going to do in a spening remarks is to tell you what I expect to fire. I council to grow for you, through

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witnesses, that Dr. Levine is a worl known personality
in New York City, he is a former prizefighter and he is
a former fight manager and trainer hardling some famous
prizefighters. He has known Mr. Segal for approximately
25 to 40 years and he know about Pioncer Development.
Company from what Mr. Segal had told him. What was his
activity with respect to Dioneer Development? His son,
who is now deceased, Eddie Lavine, nurchased 200 cl
of Pioneer Development Company, and some very, very clos.
friends of his, people that he has known for 30 to 40 years
purchased some stock not the thousands and thousands
and thousands and hundreds of thousands as that that
Mr. Walker would have you believe. How did they purchase
this say? I expect the
evidence adduced before you in this courtroom will show that
during the control of or a constitute with his lifelorg
friend, during the course of a gin runny rose, he said
"Boy, this stock lock; profile mood," Nothing more. A 10
or 20-second converse tion about a smidk. Never purchased
any of this stock for his own account, because he had no
funds to do so. You will learn and the government I expect
will prove that Mr. I wine never made one med cent in this
case, and you will Is on that In. Devine is an honest,
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person who when called before the served jury in this district came down and tratified, . terson who was called before the Securities and Exchange Compission, went down and toutified. While it is true to le not the brightest person in the world, not the most amphisticated person in the world, he is homest. The evidence will so indicate . The witnesses who will tell you that he spoke to them about this slock will so tell you. At the conclusion of the testimeny in this case, the wordich that you have, that is the separate verdict, the independent judgment you give as to the evidence against Jack Levine, will be I ampost that he is not guilly of any of the charges in this case, Thank you,

MR. NEWMAN: With your Head to portassion, Mr. Foreman, ladies and gentlemen of the jury, coursel and defendants: I'v name is Fred Nowman and I also have the house and privilege of representing Mr. Howard Finkelstein, the gentleman sitting on the outside. Bubre anything else, I'd like to clear up one matter. In. Pirhelatein has one name and that is Howard Fickelstein. But, like other people who have names that are not typically aperican pames, very often for business purposes they will use another name, and that is the used Bob De and. It is his finat name and the nickname "Bob" before that. The hope beard a lot of

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information about complication stort transactions, making markets, and things like that, from Mr. Walker. But Mr. Walker is giving you only his version of what happened in this Pioneer Company. Mr. Finkelstein has pleaded not guilty, has denied any involvement in a conspiracy or ir any fraud whatsoever, and he is here before you in court, his case as in your hands. It is your job and it is for you to decide which version makes more sense in this case and to see if the United States has proven thoir case. Mr. Finkelstein is accused of doing certain things, and one of the charges in this case is conspirace. Complicacy is a partnership to do criminal acts and Mr. Actor and Mr. Clegg were partners. Mr. Walter said so. But Mr. Finkelstein was not a partner with Mr. Acton, he 'mon't a partner with Mr. Clegg or chyone else in this case, and as the case progresses and you hear the testimon you are going to realize that, that the mere fact that Howard Finkelstein west some place to try to collect some money because of a partnership squabble dossn't make him a partner. Everyone the does business with somebody doesn't automatically become cartner, and it doesn't make him a conspirator. Mr. Fr kelstein had gope, and Mr. Walker said that's all they was hope. I don't dony great hope because every man ca ONLY COPY AVAILABLE

1 1:513 JA192 2 it in the hope that it was going to go up. We all know, 3 some of us from the experience of our friends or relative. 4 that retocks do not always go up. Thou go un and they god ... 5 if there is anything more speculative in this world than 6 a mining stock, I den't know what it is, and everyone of y 7 knows from our own common sonce that when you buy a mining stock, if the mine turns out well, you are going to make 9 a lot of morey. If the mine turns out to be a dud, it 10 doesn't make a difference how hard the people work in it, 11 how honest they were, how much they believe in it, how much 12 they themselves have worked in the commony, if that mine 13 just decen't turn out the stork is going to go down and 14 you lose memor. Maybe some meney, maybe all of your money 15 Every stock is bought in hope. To say that this was no 16 busines and that the stock was just male up just isn't 17 going to be horne out by the facts in this case. There was 18 a mine that did exist, experts were there, Mr. Finkelstein 19 is no expert, not at all, but there were experts there who 20 made assay reports. Flay took a look at this mercury, 21 and these were official assay reports, at least they look a 22 official and seemed official and born official marks and 23 impressed Howard Firm Istein and some of the other people, and they impressed readle who had more education and more . Pickelytein, and had these assay sophistication than ONLY COPY AVAILABLE

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have been no case, everyone would have made noney and avoir dewould have been happy. It turned out that the mine did not make votay, the stock went to a the money people lost money who bought the stock. We. Walker dich't tell you, . we people made woney who bought the stock. The stock went up for a while and ther it wert for . Those who bought while it was going up and money, as everyone did af they are lucky in the stock. Those who held on to it when it went down lost money. You will be hearing lots of cylinade from now on Thore are a brainous documents and the prosecution will have wither witness giving you all kinds of factual information, and what we say bere, we defense lawyers, is the only thing you are going to home until the prosecution ands its case. As the attorney for Mr. Finkelstein, I implore you, please hoop as open mind. Those is a great temptation hearing only one side to some to a find yourcaelf drifting into the prosecution's frame o' mird. as if to say "or 11, all this stuff, all those documents and all of these mitnesses, it couldn't be for no value." But this meanmotion of innocent that his Honor told ; u about before stoys with my client and all the other def ndarts withit it is eversome by the atom of the gene nution legens a massachle doubt.

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opening address, is to say that where is the presumption.

Wait, please, hear all the criticals, don't let yourself drift into a feeling performant like or a list in. When it is all in, I am sure that the evidence are will establish that there is not just a reconscable found, there is a greatest of doubt whether or not eximpt two consisted and certainly whether Howard Pipholo eig consisted any crime.

Think you very much

MR. PAPE: Noy it blence the Court, ladies and gentlemen of the jury. By page to Court Lape. I repre sent Mr. Anchony Scarding. To ger bets from Bouston, Texas. Back in 1969, anddiffically the first of 1969 when Mr. Scardino first heard of Discor Development Company, he was not a broker-dealer and pro involved in the securities business. In 1986 Ambhony Scarding had been steadily employed for 26 ; are by F ley's Departs Store in Houston, Tems, as the heal of their commercial furniture and design logarty out. It implies at that ti was selling furniture occurraint for miture o businesses doing the interior de ign for business the go with that furniture he sold, . d that had have his business for 26 years. How Franchine common, had the but to tune of . " , w's because as to some being in Bono. Mices

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Polay's was refundashing a botel out there. The name of that hotel was the Riverside Notel Mr. Scardino was spending on an average of neven days out of every month' out there doing his job everteeing the refurbishing of that hotel. He had met Mr. Actor, the man who started this company or who renewed the company, he had not him in an unrelated legitimate business venture. Mr. Acton was doing some of the work or one of the Anton's firms was doing some of the work at that breat. He Scarding had also men Ma. Degal who is home in applies unrelated legitimate business venture because in. Segal had gone to Reno to represent a group of New York proping who were considering buying but of that hotel Mr. Scarding was refurbishing. I think all of you will learn during the course of this treat that the securities registration laws are very complex. Mr. Scardino at the time was not a sophisticated investor. He did happen to introduce Mr. Acton and Mr. Segal, but it was not for purposes of Picheer Development Company. At the time Mr. Scarding introduced then casually it was at the hotel, and that is troduction had mothing to do with Pioneer Davelopment. I think the orderne will bear that out. After introducio . them. Mr. Segraino went about his business refurbishing the betch. That of his time was ONLY COPY AVAILABLE

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to get that hours one seal I die the mide are you hear during the rext week or ten days or however long 3 the trial lasts will indicate that Anthony Coarding never 4 planned any type of scheme to inclose the price of Pionee. .5 stock, he never participated in any conspiracy to plan 6 a scheme to artificially inflate the price of Pioneer stock. If he over learned of such a plan it was only much 9 Inter, after his brief involvement with Pioneer stock had terminated. So too first apport of the government's 10 case here, the aspect concerning a on piracy to formula 11 12 a plac to areificially raise the price of that stock, 13 was not even known by it. Buthony Sounding, much less 14 did be ever participate in such a part. There is a second 15 aspect of the government's case, and that has to do with 16 the cale, not the school, not the committacy to plan this 17 artificial raising of the price, bon at actual sale of 18 unregistered stock. I tell you now that the evidence 19 is going to show that there is no a stilor but that Mr. 20 Anthony Scardino did transfer or shares were transferred 21 in his same upregiste of shares of Florer stock. I think 22 you will also learn 'com the cridence that Mr. Scardino 23 trusted people, that we specifically requested that his right hand man, Rich of McKibbon, who is not here, determin that that stock was . gally assure, which he did, that

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or, Sounding thecked with a backer to determine that the stock was listed in the pick spects, which was done, and that Mr. Scarding at the time that he transferred shares in his name did so with the honest belief that everything he was deing was 100 per cent leval. If he had not had the brief that he was asyfully transferring those shares, be would maken have done so in his our pame openly. He as dealing with Tought one, Works. That is not a little fly by night brookfir That is a major, major Orited States firm. He was or line with them. He thought if they were dealing in that stock, it must be ok. and he lacked any original intention the stock was transferred in his name. I don't have to say that under the evidence the only thing that Mr. Scarding was guilty of here is using very bed judement in trusting his friend and employee, Richard Belibben, who is not have today. When hr. Scardino was ill and in the hospital. in order t. keep things running of the hotel he gave Mr. Richard McKibben a power of Mouney, which is legal document that enables the man is when you give it to get in your behalf in your name. I think the evidence will indicate that when Mr. Walker as talking about LcKibbon and Anthony Scortline transferring all them was a stock, that the bulk of that was done a wicker

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Arthony Scardino, and it was loss to thout A thony Scardinds knowledge.

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would you?

"inally, ladies and gentlemen, i went to tell you that I agree with Mr. Walker and he cays that this trial of a criminal case is a seviced watter. I hope that you will not be expecting from ee. It least, any theatrics or dramatic presentation because I believe it is a seriour matter and I trink that this criminal trial should have the same stmosphere as a hospital operating room, because the decisions you at a going to make here ara very important to the entire future and to the entire reputation of my client, Anthony Secoding the is 49 years old and who has never been arrested or charged with a crise prior to this one.

So I trusk that you will listen to the evidence. very carefully, you will learn that mything anthony Scardino did with regard to this stock was done without any criminal intent, and in good fairl, and then you will return a verdict of not guilty as to him

Thank you.

THE COURT: We will take a very short recess a. this time. Don't talk about the one at this time.

(Jury left the countroom.)

THE COURT: Come back in about eight minutes,

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(Jury present.)

MR. WALKER: May I proceed, your Penor?

THE COURT: Yes.

MP. WALKER: Burney Acton, please.

Will you call Burney Action to the stand, please!

He is in the vitness room.

up on that platform there and during recess just pull it back.

BURNEY ACTON, called as a witness by the Government, being first duly sworn, testified as follows:

MR. WALKER: May I proceed, your Honor?

THE COURT: Yes.

Keep your voice up now, Mr. Acton, so the last juror there can hear you.

THE WITNESS: Yes, sir.

## DIRECT EXAMINATION

## BY MR. WALKER:

orna age and

. .

- Q Mr. Acton, directing your attention, sir, to early 1969, where did You reside at that time?
  - A California, Los Angeles, Calirornia.
  - Q Did you know a person by the name of Mike Clegg?
  - A Yes, sir, I did.
  - Q Who was Mike Clegg?
  - A Mike Clegg and I were business partners.
  - Q Did you have a bank account with Mr. Clegg?
  - A Yes, sir, I did.
  - Q What was the name of that bank account?
  - A A. C. Enterprises.
- Q What expenses were paid of A. C. Enteprises bank account?
  - A Business and personally COPY AVAILABLE

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	jks Acton-direct	67
.	Q Did there come a time in 1969 when you heard	
	for the first time the name of Pioneer Davelopment Corpo	ra-
	tion?	
	A Yes, sir, there did.	
	Q When did you first hear the name of Pioneer	
	Development Corporation?	
	A Very early in '69.	
	O Whoma was it?	

Q where was it:

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A At an attorney's office in Beverly Hills.

Q Would you tell us, sir, who the ittorney was and who was present on that occasion?

A Royal Galvin was the attorney's name, Roy Lewis was the other gentleman present.

Q What was the conversation at that time?

A Roy Lewis had this company which turned out to be Pioneer Development, that had nothing but a lot of money in it, and some type of a little sports publication, and he wanted acquisitions for the company.

Q What did you say?

A I told him that I would go to work and see what acquisitions I could find for him.

Q Did you have lunch on that occasion with them?

A Yes, sir, I think so.

Q Did you e change telephone numbers with Mr.

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## Acton-direct

Lewis?

iks

A Yes, sir, I did.

And following that meeting did you have another meeting also early in '69 with an individual by the name of J. Walker, no relation to myself?

- Yes, sir, I did. A
- What was that conversation?

A J. Walker knew of this company. It was America. Aluminum & Steeel. An old friend of his had it. They were manufacturing mini bikes and they were interested in being acquired or being sold to a company.

- And did you arrange a meeting?
- Yes, sir, I did.
- When was this meeting? How long after you mee Walker did you have this meeting?
- Probably a week. I'm not sure exactly the A time.
- Q Who was present at the meeting and what was the purpose of the meeting?

The purpose of the meeting was to talk about Pioneer acquiring American Aluminum & Steel.

Roy Lewis Ed May, J. Walker and myself, somebody else might have been there.

And did you attend such a meeting, and what

2 happened at that time?

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A yes, sir. We did attend the meeting and Mr.

May and Mr. Lewis agreed to agree some way. American Aluminum would go into Pioneer, whether it would be through cash, which Roy Lewis was still maintaining they had, or through stock possibly.

Q Was anything signed at that meeting?

A No, sir, not at the first meeting.

Q Now, thereafter were there a series of meetings between Mr. May and Mr. Lewis concerning the proposed acquisition of American Aluminum & Steel by Pioneer?

A Yes, sir. Mr. Lewis moved into American Aluminum & Steel and started helping the manufacturing, and we were right in the same building, same office.

Q During the spring of 1969 did you take steps to get control of the stock and records of Pioneer?

A Yes, sir.

Q What steps did You take?

A I went to Phoenix, Arizona. Mr. Lewis supposedly had all of the records and the stock and everything, but it turned out he didn't have very much of it.

I went to Phoenix, Arizona, and met with a Mr. Baird Weibert, who Mr. Lewis had already made the deal with to get the stoc; and records, and picked up some

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Acton-	-direct

- Now, sir, directing your attention to approximately March 23rd or thereabouts did you go to Reno, Nevada?
  - A Yes, sir.
  - And why did you go go to Reno, Nevada?
- That particular meeting, I think we went to get the corporation in good standing with the transfer agent and to plan our stockholder meeting.
- Q Now, at that time did you have a stockholders list that you worked from?
- We had a stockholders list. Mr. Lewis had, when I first met him, but it wasn't a current up to date stockholders list.
- Directing your attention, sir, to April 21, 1969, did you send out a notice to shareholders on that day?
  - Yes, sir.
- Did this notice call for a shareholders meeting to be held on May 17, 1969, at the Mapes Hotel in Reno?

MR. DOYLE: Objection to the leading question.

THE COURT: Sustained.

MR. WALKEL Very well.

I show you Government's Exhibit 3-A for identification and ask you of you can identify that document.

A Yes, sir. This is the meeting we sent out to the stockholders, notice of meeting.

Q I show you 3-B for identification and ask you if you can identify it.

A Yes, sir.

This is the meeting, the minutes of the meeting we had in Reno.

MR. KIRSCHNER: Your Honor, we received a new legible copy of this document.

THE COURT: You will see it in due course, I suspect. No one has offered it as yet.

A Yes, sir, this is a copy of the minutes of the meeting.

MR. WALKER: Your Honor, I would offer these two documents at this time and I apologize for the lightness of the copies that have been furnished to defense counsel. We were unable to make them any darker at this time. We will make every effort to make sure that documents in the future are darker.

I offer these documents, 3-A and 3-B.

It is my understanding that counsel have seen these documents.

THE COURT. Yes. All these documents were made available ahead of time so that it should not come

## Acton-direct

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-	tr	ial										

MR. KIRSCHNER: May the record reflect that counsel for Mr. Zuber did not have this document before, to the best of my knowledge.

THE COURT: If he didn't, it is his own fault.

They were made available.

MR. GREENBERG: Your Honor, we attended a meeting on Friday to see these documents. They were not ready by Mr. Walker.

MR. WALKER: Your Honor, these documents have been available --

THE COURT: They were directed by the Court to be available long ago, and we will have no more of this.

Proceed.

Do you have any objection to the document?

MR. GREENBERT: I haven't had a chance to read
it yet, your Honor.

THE COURT: I will receive them subject to a motion to strike at the end of the day.

(Government's Exhibits 3-A and 3-B were received in evidence.)

THE COURT: I suggest, don't read them to the jury at this time in view of that.

1	jks	Acton-direct 74
2		MR. WALKER: Very well, your Honor.
3	BY MR. WA	LKER:
4	Q	Now, were a majority of the shareholders present
5	by proxy	at that meeting?
6	A	Yes, sir, by proxy or the shares that we had
7	there.	
8	Q	At that time, sir, how many shares had you
9	accumulat	ed, approximately, of the old shareholders?
10	A	Approximately 200,000 shares, as I recall.
11		MR. DOYLE: Excuse me, your Honor. May we
12	have a de	finition of what "you" means, whether it refers to
13	this witn	ess alone or who?
14	2	Could you tell us sain who collected the 200,000
15	shares?	
16	A	Mr. Lewis, Mr. Clegg, myself, and Mr. Walker.
17	Q	Mr. Casey?
18	A	And Mr. Casey, yes, sir.
19	· Q	Following that meeting, sir, what happened to
20	this acqu	isition of American Aluminum & Steel by Pioneer?
21	A	Well, I thought that it was all completed.
22	We went b	ack to California. I stayed up in about
23	Q	Who is "we", sir?
24	A	All the ones present, Mr. May, who is the
25	president	, nominated or elected president at that meeting,

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THE	COURT:	Take	iί	subject	to	connection
Go	ahead.					

Did they tell you what had happened in connection with the American Aluminum-Pioneer situation?

Yes, sir. They said they were not going to put American Aluminum into Pioreer. Mr. --

Now, sir, I show you Government's Exhibit 2 for identification and ask you to identify it.

What is it?

- It is a stockholder list of Pioneer. A
- What is the date of it? Q
- May the 16th, 1969. A
- Was that the day before the shareholders meeting? Q
- Yes, sir. A

MR. WALKER: I offer it and show it to defense counsel. This document, being a carbon copy, was incapable of reproduction.

MR. NEWMAN: No objection.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 2 was received in

## evidence.)

MR. WALKER: Your Honor, if I could, could I just state the total number of shares outstanding as of

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May 16th?

THE COURT: Yes.

MR. WALKER: Common stock outstanding in Pioneer
Development Corporation -- that is the last entry on the
list of shareholders dated May 16, 1969 -- 515,400 shares.

Q Did there come a time, sir, when Mr. May and Mr. Lewis resigned from all participation in the affairs of Pioneer?

A Yes, sir.

Q I show you Government's Exhibit 4-A and 4-B for identification.

Can you identify those?

A These are resignations from Mr. Lewis and Mr. May.

Q Is it a resignation document, sir?

A Yes, sir; they are.

MR. WALKER: I offer them.

MR. NEWMAN: No objection.

THE COURT: Received.

(Government's Exhibit 4-A and 4-B were received in evidence.)

MR. WALKER. I note for the record that these documents are dated June 2, 1969.

Q Sir, following the resignation of May and Lewis,

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were you still a holder or in control with others, with Clegg, of the stock of Pioneer that you had accumulated?

A Yes, sir.

And at that time, sir, directing your attention to, let's take July 31st, 1971, what assets, if any, did Pioneer have at that time?

A We had an indebtedness from American Aluminum a
Steel or from Mr. May --

Q A claim against American Aluminum & Steel?

A Yes, sir.

Q Was that claim for \$35,000?

A Yes, sir.

Q Apart from that, were there any other assets in the company at that time?

A No. sir.

Q Now, did You ever sue on the American Aluminum claim?

A No, sir, we didn't.

Q Did you ever collect any money on that claim?

A No, sir.

Q As of July 31st, 1969, what individuals were in control of this stock that had been accumulated from old shareholders?

A . Mr. Clegg and myself.

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	Q	And	dur	ing	this	pe	eriod	d of	ti	Lme	had	you	informed
Mr.	Clegg	of v	what	had	been	go	oing	on	in	co	nnec	tion	with
Pio	neer.	Amer	ican	Alu	ninum	٤	Stee	el,	so	for	rth?		

- Yes, sir. A
- Do you know Anthony Scardino? Q
- Yes, sir.
- And as of 1969 how long had you known Mr.

### Scardino?

- For several years prior to that. L
- Do you see him here in the courtroom?
- Yes, sir. That is Mr. Scardino. A
- And he just stood up, is that correct? 0
- Yes. A
- During the spring and summer had you discussed the Pioneer situation with Mr. Scardino from time to time?
  - Yes, sir. A
  - And where were those discussions? Q
  - In Reno, at the Riverside Hotel primarily. A
- And what business did you have at the Riverside Q Hotel?
- Mr. Scardino was buying and remodeling the A Riverside and he was a friend of mine. I just visited him.
  - Did there come a time, sir, in the summer of

JA215 1 Acton-direct jks 1969, approximately August or thereabouts, when you had 3 a conversation with Mr. Scardino concerning an individual who might be able to furnish money to Pioneer? MR. PAPE: Objection to leading, your Honor. 6 THE COURT: Overruled. Yes, sir, there did. A 8 And where was that conversation?

In Reno. A

Where?

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At the Riverside Hotel.

What was the conversation that you had with Q Mr. Scardino in approximately August of 1969?

MR. DOYLE: Your Honor, may we have a standing objection to conversations not in the presence of our respective defendants?

THE COURT: Yes, subject to connection.

MR. DOYLE: Thank you, your Honor.

THE COURT: I will take it all subject to connection, so long as it is with the defendant or an identified co-conspirator.

Would you rephrase your question, please?

What was the conversation that you and Mr. Scardino had in approximately August of 1969 at the Riverside Hotel?

	UNZIO
1	jks Acton-direct
2	A Mr. Scardino said that a man that was helping
3	him finance the Riverside Hotel could also help me with
4	this company, with financing and other help, if he would
5	bt interested in it.
6	Q Do you recall if that individual's name was
7	mentioned by Mr. Scardino on that occasion?
8	A I don't recall on that occasion whether it wa
9	or not.

- Q Shortly following that first conversation did you have a further conversation with Mr. Scardino?
  - A Yes, sir, I did.

- Q Where was that conversation?
- A At the Riverside also.
- Q What was that conversation?
- A That I should try to contact this man. I think at this time he gave me the name or said he would set up the meeting to see if he was interested in helping us with this company.
- Q Who was the individual? What was the name that was given to you at that time?
  - A Alan Segal.
  - Q What did you do then?
- A Some time later, with in a short period of time,
  Mr. Segal was going to be in Dallas, and Mr. Scardino

1	jks Acton-direct 8
2	informed me that if I would come to Dallas, that I could
3	meet with him and tell him my story.
4	Q And, sir, did there come a time in the late
5	summer of 1971 when you met Mr. Segal in Dallas?
6	A Yes, sir.
7	Q Who was present and where was the meeting?
8	A The meeting was in South and Center, Sheraton
9	Hotel I believe it is, and Mr. Segal, Mr. Scardino, Mr.
10	Clegg, myself and several other people were there in the
11	coffee shop or restaurant.
12	Q Sir, how did the meeting commence?
13	A We introduced ourselves and sat down at the
14	table and started talking about the company, that we were
15	Pioneer Development Company.
16	Q Did Mr. Clegg state the problem?
17	A Yes, sir.
18	Q What did h. say?
19	A Told him that we had this company and that we
20	didn't
21	MR. NEWMAN: Objection. Hearsay.
22	A We
23	THE COURT: Just a moment.
24	Overruled.
25	A We had this company, that we needed some help,

We had some potentially very good assets going into the company but we needed money and, as I recall, had a stockholders list and told pretty well about the company, what we were trying to do, what we wanted to do.

Q What did Mr. Segal say?

A He said that it sounded interesting, that he would have to look into it further, and he'd be back in touch with us.

Q Was anything said, sir, by Mr. Segal as .....
he could do or what his abilities were?

A His abilities were very, very, as I understood it -- I'm not saying that Mr. Segal said this directly, but as I understood it from this conversation with Mr. Segal, if he would get involved with it, he would furnish us a lot of money and help us very much with the stock.

Q Was anything said, sir, concerning what could be done in the market in the stock at that meeting?

A Yes, sir; if he would become involved, he could do an awful lot with the market. As I understood at this meeting -- I don't know how I understood it, but I understood he was a stockbroker.

MR. DOYLE: I object to the testimony because he can't explain how he inderstood it.

THE COURT: Strike it out. State the conversa-

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What was your conversation, sir?
THE COUPT: Sustained.

Q What was said concerning the price of the stock at that meeting?

A That he could get --

MR. DOYLE: Can we have who said it?

THE COURT: Who said it. Who said what to whom?

Q Who was speaking, sir?

A Mr. Segal.

THE COURT: What did he say and what did you say to him? Give us the conversation as best you can recall it.

A Mr. Segal said that if he got involved with the stock, he had a lot of strength in the stock market, he was not interested in penny stock or low priced stock, if we could open at \$5 a share, then he would be interested in the stock, and we showed him the potential assets we had for the company.

THE COURT: When you say that, what were the potential assets you showed him?

THE WITNESS: We had a mining property and a report on a mining property and a lot of assays on it.

THE COURT: What was the name of that mining property?

A At this meeting I don't -- he said if he did take an interest in it, he would get us plenty -- all the money we needed, but at this meeting he did not make a decision whether he was going to help us with the company or come into the company or not.

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Was a figure mentioned to Mr. Segal? Q

A There were several figures on the mining property, we had breakdowns as to how much it took to put this mine into operation.

The mine was not in operation at that time?

No, sir.

THE COURT: Did you tell that to Segal? THE WITNESS: Yes, sir.

Q Do you recall any of the figures that were mentioned at that time as to what money was needed?

I think it was approximately \$500,000 on the mine to put it into operation.

Following that meeting, sir, did you meet Q Mr. Segal again at the Riverside Hotel?

> A Yes, sir.

What was your conversation with Mr. Segal on that occasion and how long was it after the Dallas meeting?

A It was a short period after the Dallas meeting. I don't remember. I --

MR. DOYLE: Can we find out who else was present, your Honor, if anybody?

THE COURT: Yes, please, Mr. Walker, fix the time, the number of persons present and "State the

1	1hh 4 Acton-direct
2	conversation."
3	Q Who was present at that meeting, as best you
4	can recall?
5	A As best I can recall at the next meeting, I
6	remember Mr. Scardino, Mr. Segal and several other gentle.
7	I don't recall. It wasn't a real meeting as to business,
8	it was an accident meeting. I was up there and
9	THE COURT: We are not concerned with
10	Q Where was the meeting?
11	A At the Riverside Hotel.
12	Q What was the conversation at that meeting at
13	which Mr. Segal and Mr. Scardino and yourself were present
14	A General conversation about the mining property
15	and about the Pioneer Development.
16	Q Can you tell us, sir, what was said more
17	specifically?
18	A (No response.)
19	Q Do you have a recollection?
20	A No, sir, I don't have a recollection.
21	Q Following that meeting, directing your
22	attention to late September- early October, during
23	the fall, did you have a meeting at the Century Plaza Hotel
24	A Yes, sir.
25	0 1/2

Where is the Century Plaza Hotel?

		JA223	88
1	1hh5	Acton-direct	89
2	A In	Los Angeles.	
3	Q Who	o was present, sir, at that mee	eting?What
4	happened?		
5	A At	that meeting, Mr. Clegs	
6	MER.	DOYLE: Can we find out who wa	s present,
7	please?		
8	THI	E COURT: He just asked who was	present. I an
9	afraid you wer	ren't listening.	
10	MR.	DOYLE: I thought he then sa	id "What
11	happened."		
12	A Mr.	Clegg, Mr. Walker, Jay Walker	, myself,
13	Mr. Segal, I t	think one of Mr. Segal's attorn	eys.
14	Q Do	you recall which attorney, wha	t attorney?
15	A Sch	diffman.	
16	Q Mr.	Schiffman?	
17	A Yes		
18	Q Sir	, what was discussed at that m	eeting?
19	A At	that meeting we discussed	
20	Q Whe	re did the meeting occur, sir?	
21	A In	Mr. Segal's suite.	
22	Q Weu	ld you describe that suite?	
23	A As	I recall he had two rooms, at :	least a two-
24	room suite, on	e sitting room and a bedroom,	a large bedroom.
25	Q Was	anything going on in the room	at that time?
	ll .		

Α	Yes,	sir.	There	พฐธ	football	games	on	both
television	sets							

Q Sir, would you tell us what was said at that meeting, as best you can recall?

A Well, we had a lot of the reports on the mine, we had a lot of reports on a cigarette filter that Mr.

Jay Walker and I had been working on, we showed that to them, and we had -- in fact I am sure we had some samples of the cigarette filter. We did discuss another possible acquisition, we had some brochures and information on another company called Precise Power.

Q At that time were any of these companies that you just mentioned actual acquisitions in Pioneer?

A No, sir.

Q They were possible future acquisitions?

A Yes, sir.

Q Was that told to -- made char to Mr. Segal?

A Yes.

Q Do you recall, sir, discussing with Mr. Segal at that meeting what Mr. Segal would no for you in New York?

A What Mr. Segal would do for us? We were to have another -- we would have another meeting in Reno in a very short period of time. He told me to get the mining property, get 11 of the paper work on the mining

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property ready and up to date. I don't recall what we did on the cigarette filter, but he wanted more information on the Precise Power, and we were talking about several

Sir, was there any conversation at that meeting at the Century Plaza Hotel as to what Segal could do for you?

other different things of a possibility to go into Pioneer.

- Yes, sir.
- What did he say?

He said that when we got all of this done that he wanted, we'd meet in Reno, give him stock, he would come to New York, open up the stock to trading and then as soon as he got that going he could get us all the money we needed for the mining property and for other things, including all the expense money Pioneer needed.

Sir, how much money was mentioned at that meeting!

Well, we were talking of approximately \$500,000 for the mining property, and he stated that this couldn't be done immediately, it would take time to get the money borrowed, and all, but he could try to furnish this money to keep it active, to keep it trying to get it going until we get the big money.

> Did he say that the big money would be coming? 0

Yes.

#### Acton-direct

Q Was anything said, sir, concerning what he wanted in the way of stock?

A Yes, sir. I don't recall the exact figures of the stock, but he told us the stock -- I think he wanted approximately half of all the stock that we had. The stock we kept we couldn't sell or let go on the market.

Q Did he say why?

A Yes, sir. He said he couldn't sustain a market if we sold our stock.

Q Did he say what he was going to do with the stock that was given to him?

A He was going to use it to open the market with,

Q Did he say how you were to get the money that he had promised you, the half million dollars, or thereabouts:

A No, sir, not exactly, but I understood we'd get the half million dollars--

THE COURT: Sustained. Strike it out. What did he say?

THE WITNESS: As I recall, sir, he said it would be through lones, but he had to get the stock trading first before we could get loans into the company to get the mine into full operation.

Q At that meeting did you go over the stockholders!

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- Yes, sir. A
- Did you have a conversation with him?
- A Yes, sir.
- What was said by Mr. Segal and anyone else in connection with the stockholders' list when you went over it

A All of the larger blocks of stocks, asked us if we knew who had them and if they would be hitting the market just as soon as we opened it up.

THE COURT: What did you tell him?

THE WITNESS: We told him that we had contacted most of the ones and the ones we hadn't contacted we would contact and try to acquire the stock.

Q What was said in response to his question as to what stock would hit the market when the market opened up?

A We just told him that we would do our best that none of it did or very little of it did. We would continue to try to acquire the stock.

- Q Did he tell you whether or not he would have money available for you at the next meeting?
  - Yes, sir. A
  - 0 What was that conversation?
- The next meeting he would have enough expense money for us to keep the mine in operation -- in line to

1	lhh l	10	Acton direct	
2	opera	ite.		
3			MR. DOYLE: I am sorry, I didn't hear the	
4	witne	ess.		
5			THE WITNESS: In line to operate. We did not	
6	have	the m	nine in operation, but we had a lot of equipme	ent
7	out t	here	and we were spending money.	
8		2	Sir, following this meeting at the Century P	laz:
9	Hote1	, dir	ecting your attention to October 23, 1969,	
10	or the	reabo	uts, did you have a meeting in Reno on that d	lay:
11		Α	Yes, sir.	
12		Q	Where?	
13		A	The Riverside and at the transfer agent.	
14		Q	Is that the Nevada Agency and Trust?	
15		A	Yes, sir.	
16		Q	Were they the transfer agents for Pioneer	
17	Devel	opmen	t Corporation?	
18		A	Yes, sir.	
19		Q	Who was present on October 23rd at the River	<b>3</b> 1d3
20	Hotel:	?		
21		Α	Mr. Clegg, Mr. Segal and myself.	
22		ବ	Did you have a conversation with him at that	
23	time?			
24		Α	Yes, sir.	

Q What was said by whom?

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A We told him that we were ready to go to the transfer agent and have the stock issued. I think Mr. Lamb was either there or came and he needed money real bad for the mining operation.

Q What was done?

A We issued all the stock that we had available, I don't recall how much stock it was at that time, I know there was one large block of stock that couldn't be transferred for some reason. Mr. Segal gave us a check for the mining operation which we gave Mr. Sheldom Lamb \$20,000.

Q Do you recall the account that that check was drawn on?

A It was a group of two or three names here in New York. I think Mr. Schiffman signed the check.

THE COURT: You said you issued all these -- what do you mean, you issued?

THE WITNESS: We had it transferred, sir?

THE COURT: Transferred to whom?

THE WITNESS: To Zahl and -- if he would give me where we transferred the stock that day --

Q I show you Government's Exhibit 1A for identification and ask you if you can identify that document.

A Yes, sir, this is an order to the transfer agent

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to transfer stock.

1hh 12

Q What's the date on that document?

A October 23rd.

THE COURT: What year?

THE WITNESS: 1969.

MR. WALKER: Your Honor, I offer this at this time

MR. DOYLE: May we see it? The copy we have

is illegible.

(Pause)

MR. DOYLE: No objection, your Honor.

THE COURT: Received.

(Government's Exhibit 1A was received in evidence.)

Q Sir, I show you that document. Would you simply state to the jury the names of the individuals who received stock pursuant to that--

THE CCURT: It is in evidence. You can read it.

MR. WALKER: Very well, your Honor. This transfer record shows the receipt in the 56,550 shares of stock to the transfer agent and reflects the transfer out of the following shares: 30,000 in the name Francine Zolt; 4,500 in the name of Bill Morgan; 20,000 in the name of Herman Ermanno Mariot; and 2,050 in the name of Herr Kaighan.

Q Sir, do you know who was the recipient of the

1	1hh 13	JA231 Acton-direct 96
2	stock in	the name of Francine Zolt?
3	Α.	Yes, sir. Mr. Segal.
4	۹.	Who is Francine Zolt?
5	A	His secretary.
6	9	Was his secretary's name actually Francine
7	Zahl?	dodding Francine
8	A	Z-a-h-1, yes, sir,
9	Q	This was a mistake, is that correct?
10	A	Yes, sir.
11	Q	With respect to the other stock, the Morgan,
12	Carrigan	and Kagan stock, 26,550 shares, what was done
13	with that	
14	A	That stock was turned over to Mr. Segal ti
15	bring to	
16		Was all of the 56,550 shares on that day given
17	1	gal to bring to New York?
18	. А	As I recall, yes, sir.
19	Q	Do you recall, sir, Mr. Segal taking certain
20		ts that had been furnished to him with him to
21	New York?	that seem furnished to him with him to
22	A	Yes, sir.
23	Q	
24	A	Where did you get these mine reports? From Shelden Lamb.
	1	- Long One Later L

Who is She don Lamb?

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	JA232 97
1	lhh 14 Acton-direct
2	A Sheldom Lamb is a rancher and miner in
3	owns mining properties in Nevada.
4	Q Have these mines ever been put in production?
5	A No, sir.
6	Q I show you 6A and 6B for identification. I ask
7	you if you can identify those documents?
8	A Yes, sir, these are feasibility studies on
9	the mine that we were acquiring in Dixie Valley.
10	MR. WALKER: I offer these documents.
11	MR. DOYLE: No objection, your Honor.
12	MR. KIRSCHNER: No objection.
13	MR. NEWMAN: No objection.
14	THE COURT: Received.
15	(Government's Exhibits 6A and 6B wore received
16	in evidence.)
17	Q Sir, do these documents reflect possible production.
18	figures of the mine if money was put into the mine and
19	if it was placed in operation?
20	A Yes.
21	MR. DOYLE: Objection, your Honor. The
22	documents speak for themselves.
23	THE COURT: Sustained.
24	Q Sir, was the \$20,000 check that Mr. Segal gave
25	you on that occasion deposited?

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# 1hh 15

Acton-direct

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A Yes, sir.

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Where was that deposited?

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The bank in Reno.

Did you have a conversation with Michael Clegg shortly after this meeting concerning the stock that could not be transferred?

Yes, sir, I did.

That there was some problem about?

Yes.

Would you tell the court and the jury what conversation you had with Mr. Clegg shortly following October 23, 1969?

MR. KIRSCHNER: Objection to that. There has been no foundation laid, your Honor.

THE COURT: Overruled.

A There was a 100,000-share certificate that was in the name of Vandersteen Estate that was supposed to be ready for transfer, and there was something that the estate, bank or something had to sign before the transfer agent would transfer it, and Mike Clegg sta that he would go to I think it was San Diego where the estate was and get whatever technicality or detail taken care of together that satisfied -- to satisfy the transfer agent to transfer the stock.

1	1hh 16 Acton-direct 99
2	Q Sir, directing your attention to October 29,
3	1969, did you have a meeting with individuals on that
4	occasion concerning a possible acquisition called Precise
5	Power?
6	A Yes, sir, I did.
7	Q What was the conversation you had on that
8	occasion?
9	MR. DOYLE: May we have who was present, your
10	Honor?
11	Q And who was present.
12	A I am drawing a complete blank on the name of
13	the man who owned Precise Power.
14	Q Ross?
15	A Yes, Don Ross, his brother-in-law, Sonny Wilkes,
16	they owned this company called Procise Power. We had
17	agreed to bring them into Pioneer American
18	MR. DOYLE: May we have who the witness refers
19	to when he says "We"?
20	THE COURT: Yes. Could you please, Mr. Walker,
21	get the witness to state conversations and give admissible
22	evidence so we aren't interrupted here ever second. Property
23	interrupted, I might add. I don't mean in any way to cast
24	any opprobium on counsel. He is supposed to interrupt.
25	Q Can you te 1 us, sir, who was present at this

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meeting and what was said on this subject?

- Mr. Clegg, myself, Don Ross, Mr. Sonny Wilkes.
- What was said on this occasion?
- Precise Power was a company that was to build Power --
  - Q Who was speaking, sir?
  - Sir? A
  - Who talked about this? Q

THE COURT: Give us the conversation. Who was there and who said what to whom. That is all we want to know.

The four people that I stated was there. Mr. Ross made the presentation.

THE COURT: What did he say, Mr. Ross, what did you say, what did the others say?

THE WITNESS: Mr. Ross told us what Precise Power was and what the potentials were. They had brochures and information on Precise Power, what it could do to make money. We agreed. When I say "we," Mike, Clegg and I are Mr. Ross agreed that this was to go into Pioneer Development Corporation for exchange of stock.

Q Was that to be restricted stock to be issued to Ross?

> A Yes, sir.

1	1hh 18 Acton-direct
2	Q What is restricted stock, sir?
3	A Stock that cannot be sold and a stamp goes
4	on it, it can't be transferred without permission of
5	the attorneys for the company.
6	Q Was any cash to be given to Precise Power?
7	A No, sir.
8	Q Just stock in Pioneer Development Corporation:
9	A Yes, sir.
10	Q Do you recall, sir, how many shares?
11	A 600,000, I think it was.
12	Q Was an agreement entered into on that day?
13	A Yes, sir.
14	Q I show you 5A for identification and ask you
15	if you can identify it?
16	A Yes, sir. This was the plan of reorganization.
17	for Precise Power coming into Pioneer.
18	Q I show you 5B for ientification and ask you if
19	you can identify it?
20	A Yes, sir. This was minutes or a resolution
21	from Pioneer to issue the stock to Precise Power
22	MR. GREENBERG: Excuse me, your Honor, we
23	can't hear the witness back here.
24	(Record read.)
25	MR. WAIKER. I offer these documents.

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Acton-direct

2 MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 5A and 5B were received in evidence.)

- Q Sir, following this acquisition of Precise

  Power was any reason why you ever obtained from Precise

  Power?
  - A No, sir.
  - Q Was anything ever produced by Precise Power?
  - A No, sir. They only had some patents and some --
  - Q They had some patents?
  - A Yes, sir.
- Q Sir, my question is, was any revenue ever-processed by Precise Power?
  - A No.
- Q Directing your attention, sir, to October 31st, did you learn from Mr. Segal or from Mr. Clegg that stock was trading in New York?
  - A Yes, sir.
  - Q How did you learn that fact?
- A From Mr. Clegg. I spoke to him either on the telephone or in person.
- Q Sir, did you learn that week about a check that Mr. Segal had written

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### Acton-direct

Α	Yes,	sir

- Q What was the conversation you had on that subject?
- A Mr. Lamb called me and told me the check had been returned.
  - Q Did you discuss that with Mr. Clegg?
  - A Yes, sir, I did.
  - Q Did someone call Mr. Segal?
  - A Yes, sir.
  - Q Who?
  - A Mr. Clegg.
  - Q Were you present when that call was made?
- A No, sir. I don't think I was present when the call was made.
- Q Did you have a conversation with Mr. Clegg following that call?
  - A Yes, sir, I did.
  - Q What was the conversation you had at that time?
- A He said that Mr. Segal couldn't understand why this check had been returned, but it would definitely be taken care of immediately.
  - Q Sir, was any money ever made good on that check?
  - A No, sir.
  - Q Directing our attention, sir. to Monday or

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1hh 21 Acton-direct

Tuesday, November 3rd or 4th, did you have a conversation with Mr. Scardino concerning raising moneywith Pioneer stock?

A Yes, sir, I did.

Q What was the conversation you had with Mr. Scardino on that occasion?

MR. KIRSCHNER: Objection, your Honor. Who was present and where did it occur.

Q Can you tell us, sir, was anyone else present or was it just you and Mr. Scardino?

A As I recall, just Mr. Scardino and myself.

Q Where was the conversation, as best you can recall!

A As best as I can recall, Riverside Hotel.

Q What was the conversation?

A I told Mr. Scardino that I needed money awfully bad and asked him if he had any source that we could borrow some money on some Pioneer stock, that the stock was trading now.

Q Was anything said about selling the stock?

A Yes, sir. I told him I could not sell it but I could use it to borrow some monry on.

Q Did you tell him why?

Why you couldn't sell it?

A Yes, sir. I told him I promised I would not

	Acton-direct
2	sell any of the stock that we had.
3	Q Did you tell him anything concerning who that
4	promise had been with?
5	A Yes, sir, I told him it was Mr. Segal.
6	Q Prior to that occasion had you had occasion
7	to discuss with Mr. Scardino what Mr. Segal told you he
8	could do with Pioneer?
9	MR. PAPE: Objection, your Honor.
10	THE COURT: Sustained. Fix the time.
11	MR. WALKER: Your Honor, I am trying to.
12	Q Can you tell us, did you have conversations
13	prior just yes or no did you have conversations
14	prior to November 3rd or 4th with Scardino concerning
15	the Pioneer-Segal situation?
16	A Yes, sir.
17	Q Do you recall, sir, where those conversations
18	occurred and when?
19	A It had been at Reno and the Riverside
20	Hotel on various occasions. I can't give you an exact
21	time of
22	Q During what period of time prior to the 3rd
23	or 4th of November?
24	A I think we first got together like in the
25	latter part of August up until them. We met many times.

- Q Did you have frequent conversations with him?

  A Yes.
- Q What did you tell Scarding concerning what Segal had said he could do on those frequent occasions?

A That the stock would be opened eventually -- you know, was opened, and we would have a lot of people in the market, and the stock would go up.

Q When you spoke to Mr. Scardino on the 3rd or 4th, did you have a discussion with him concerning why the stock couldn't be sold?

A Just that I could not -- I promised that I would not sell the stock, I could use the stock for borrowing money.

THE COURT: It is 4:30. We will break now until tomorrow morning at 10 o'clock. Don't talk about the case with anyone, don't let anybody talk about it with you. Good night.

(Jury not present.)

(Recess.)

THE COURT: Proceed in the order in which you opened, if you have any motions.

MR. DOYLE: Your Honor, the remaining motion that I had that I didn't get to this morning was a motion for a representation by the government that no evidence was

introduced to the grand jury concerning the criminal record of Mr. Segal. The basis for that motion is that I notice that in reading the grand jury testimony of Mr. Levine that Mr. Levine was asked the question "Do you have a criminal record," and fortunatelyfor Mr. Levine the answer was no. However, Mr. Segal did not appear before the grand jury and the question is whether this highly improper line of evidence was pursued in any independent fashion with respect to Mr. Segal. I want an assurance, in other words, that his criminal attention was not called to the attention of the grand jury in any form, direct or indirect.

MR. WALKER: To my knowledge that is the case.

MR. WALKER: To my knowledge that is the case.

I would be glad to check further, but I have no recollection of Mr. Segal's criminal record being presented to the grand jury in any fashion. He was not a witness before the grand jury. His credibility wasn't in Issue in any grand jury proceedings.

MR. DOYLE: Thank you, your Honor.

MR. KIRSCHUER: At this time I'd like to rene the motions made on behalf of Mr. Zuber, with particular emphasis on the exculpatory evidence motion, based on the evidence of witnesses who will not testify at this trial

THE COURT: Denied. I have heard it extensively

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within the last ten days. Denied.

MR. KIRSCHNER: I assume you dery the other motions as well?

THE COURT: Yes.

MR. WINOGRAD: Your Honor, I have spoken to Mr. Doyle who represents Mr. Segal. This past week I had been in NYU Hospital with my father who is on the critical list, and I spoke to Mr. Dovle yesterday as well as today, and he has indicated to me that if I were to call Mr. Segal as a defense witness for Mr. Levino he would be in a position where he could exonerate Mr. Levine from any criminal capacity in this case. The fact of the matter is, he has indicated to me, when I say "he" I mean Mr. Doyle, that Mr. Segal will not be a witness in this case. Accordingly and based on the information that Mr. Segal could impart to this jury about the activities of Mr. Levine and the relationship between Mr. Levine and Mr. Segal and the exculpatory evidence that I could question about with respect to "r. Levine's conduct, I would move for a severance under Rule 14. This motion is not being made as a dilatory tactic. It is made with all due deference to this court, seriously made, and I think that Mr. Levine is going to be hampered very much so in a joint trial with Mr. Sogal. This is not

I am making this motion most seriously, your Honor, I wish you would consider it most seriously because, very frankly, Mr. Levine doesn't belong in this courtroom, and he never did belong in this courtroom from the very beginning.

THE COURT: Mr. Walker?

position that this motion is premature in many respects.

I believe Mr. Doyle has plenty of motions -- certain motions pending now or has indicated that he will make motions concerning the prior record of Mr. Segal. It is obvious that Mr. Doyle is contemplating Mr. Segal's testifying in this case.

THE COURT: I think it is premature. Denied.

MR. WINOGPAD: If that is the position of the government, and it should become a factor in this case, that Mr. Segal does not testify, would your Honor consider at that time the renewal --

THE COURT: Well cross that bridge when, as and if we come to it. Premature at this point.

MR. WINOGRAD: Is that the only basis that the government is objecting to it?

MR. WALKER No.

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THE COURT: I am sure the government has a lot of other objections which aren't hard to think of.

MR. WINCGRAD: I don't think so. Judge.

THE COURT: At this point it is premature.

MR. DOYLE: May we get come additional 3500 material from the government so there won't be any delay between the time that the next witness appears and the concexamination?

MR. WALKER: Yes.

THE COURT: Anyone else?

MR. PAPER: Does Mr. Ne man have any motions?

THE COURT: Go in the order I said in which

you opened.

MR. NEWMAN: If your Honor please, I move at this time to dismiss the indictment regarding the conspiracy charge against Howard Finkelstein on the ground that the U.S. Attorney in his opening did not set out facts sufficient to make our a cause of action on the conspirace charge.

THE COURT: Denied.

MR. PAPE: Your Honor, I move to dismiss the indictment on behalf of Mr. Scardino on the grounds that the unnecessary delay in prosecution has actually --

THE COURT: You don't need to make that motion.

It's bee made four times. I have ruled three times that anyone as to who in fact it relates to get the benefit. of it.

MR. PAPE: He has suffered actual prejudice in the destruction and burglary of records pertaining to this case, within the past 16 months he has had two burg at his office, one accompanied by a fire. I would like to state that for the record. I would also like to state for the record--

THE COURT: I don't see how that would prejudice you, if you had been indicted earlier.

MR. PAPE: No, your Honor. It was prior to the September indictment.

THE COURT: Assume you had been indicted three years ago, how would that in any way have prevented the fire?

6 pm

MR. PAPE: Well, your Honor, if he had been tried three years ago he would have had access to records of an exculpatory nature.

THE COURT: I see, records have since been destroyed by fire.

What do you say?

MR. WALKER: Your Honor, I don't think there has been a sufficient showing as to the nature of any prejudice. This is highly speculative at this point and conclusory. I don't think it approaches the kind of showing that is required for any sort of a motion to be granted as put forward by defense counsel.

MR. PAPE: If you would want a hearing on it,

THE COURT: I will hold it after the trial, if it is necessary -- if it should become necessary.

MR. PAPE: Yes, sir.

behalf of Mr. Scarding on the grounds that it appears from my discovery in the case that there are at least three conspiracies involved here and as to Mr. Scarding, the evidence would indicate that he had participation in one of the three at the most. I think he is prejudiced by being joined.

THE COURT: Denied.

MR. PAPE: Pardon me, your Honor. As I was going to state earlier today before the jury panel was brought in, Mr. Scardino was involved in the purchase and refurbishing of the hotel in Reno, Nevada. The evidence would be that that hotel was purchased by the Houston group of investors from the Teamsters. I think that the fact that it was purchased from Teamsters is of no relevance to this case. I think that my client could be prejudiced because of certain bad connotations in certain jurors' minds concerning the Teamsters, and I move this Court for an order prohibiting the United States Attorney from making any reference concerning from whom that hotel was purchased

THE COURT: Do you intend to make any reference.

and if so, show me how it is material to this case.

MR. WALKER: Your Honor, the only way I would do it, I do not intend to do it in part of my direct case the only way I would to it would be to clear up cross-examination by virtue of redirect. If it is a matter that was gone into on cross-examination, if it becomes relevant to give a full picture to the jury.

THE COURT: I direct you not to do it without first approaching the bench and advising me that you intend to do it and why. :lear?

MR. WALKER: Very well.

THE COURT: All right.

MR. PAPE: Thank you.

THE COURT: I would like requests of charge no later than next Monday at 10 o'clock.

MR. KIRSCHNER: We would like to inquire of the Government whether or not all of the grand jury testimony of the witnesses and any comments made by the prosecution were recorded.

THE COURT: Was what?

MR. KIRSCHUER: Recorded by a stanographer.

MR. WALKER: I can represent, your Honor, that it is the practice in the Southern District of New York for a stenographer to be present when testimony is taken.

THE COURT: Yes.

MR. WALKER: And this practice was followed in this case.

THE COURT: For the last 500 years.

All right?

Good night.

(Adjourned to Tuesday, Docember 3, 1974, at 10.00 o'clock a. 1.)

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SOUTHERN DIST OF COURT REPORTERS IN COMPTENTISE

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8		EXALBEN INDEX
9	Government	Identification ididence
10	3-A	7
11	3-B	73
12	2	76
13	4-A	77
14	4-15	7.7
15	1/1	95
16	67.	97
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18	5A 5B	1.02
19		£22
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TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, D.J. ON JA251.16
DECEMBER 3, 1974

UNITED STATES OF AMERICA
vs.
HOWARD FINKELSTEIN, et al.

December 3, 1974, 10:30 A.M.

(Trial continued)

(Jury present)

BURNEY ACTON, resumed.

THE COURT: Good morning. I am afraid I must remind you the court hours here are 10 to 4:30. Somebody came straggling in -- I don'tknow who it was and I don't want to know -- this morning, 20, 25 minutes late.

Now, the only consequence of that is that we will have to work 20, 25 minutes later on to make up for it, and I know that all of you have other things to do, that you want to get back to your own affairs, and I have a lot of other work, the lawyers have a lot of other work, so let's try to run this on a tight schedule from 10 to 4:30.

That is what I want to do. That is what the lawyers want to do. But if you comestraggling inlate, then we are only going to have to sit later.

I don't want to do that. I don't want to have to sit Saturdays. I hope we don't have to sit through the Christmas holidays. So let's work it down.

THE DIST PICT COURT REPORTERS, U.S. COURTHOUSE

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Now, yesterday, sir, we were discussing the meeting

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stock, he felt sure.

			JA254		
1	jkh	Ac	ton-direct		119
2	. Q	Now, did M	r. Scardino t	ell you	now much money
3	he wanted	1?			
4	A	As I recal	l, he needed	\$7,500.	
5	Q	Now, follow	wing that con	versation	n did you have
6	a subsequ	ent convers	ation a day o	r so late	er?
7	· A	Yes, sir.			
8	Q	And who was	s present?		
9	A	Mr. Scardin	no and myself	were.	
10	Q	And where	was the conver	rsation?	
11	А	In Reno.			
12	Q	Would you t	tell us what w	was said	on that occasion
13	A	He said tha	at he had made	an arra	ngement, almost
14	positive	he had made	an arrangemen	nt, he co	uld borrow some
15	money on	the stock in	Tucson, thro	ough a tr	ust of some type
16	. Q	Did he say	where the adm	ninistrat	or of the trust
17	was?				
18	A	As I unders	tood it, in 7	lucson.	
19	Q	Now, at tha	t time was th	nere any	mention made
20	by either	of you conc	erning sellin	g the st	ock?
21		MR. DOYLE:	Your Honor, I	object	to the leading
22	question.	I think the	witness is r	eally be	ing led through
23	every asp	ect of conve	rsation. I th	ink he s	hould be asked
24	what was	said in the	conversation.		46
25		THE COURT:	I think you a	re leadi	ng now. Fix the

	JA255
1	jkh Acton-direct 119a
2	time, who was present, what was said.
3	MR. WALKER: It is the same conversation.
4	Q At the same conversation was anything further
5	said? Do you recall anything further said?
6	A The only thing was that we said the stock could
7	not be sold, it had to be borrowed against.
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			JA256
2	am	1	ms Acton-direct 120
		2	Q Now, following that conversation, which you
		3	place some time, I believe, in the midweek of November 3rd
		4	or 4th, did you have a conversation with Mr. Clegg concern-
		5	ing the problem with the Van Der Steen stock?
		6	A Yes, sir, we had a conversation.
eri Sec		7	MR. DOYLE: Can we find out when, where, who was
		8	present?
		9	Q The answer to my question would be yes or no?
		10	You did have a conversation?
		11	A Yes.
		12	Q When was it and where was it and who was present?
		13	A It was more than likely a telephone conversation,
		14	as I recall, with Mr. Clegg, and he said that he had gotten
		15	the Van Der Steen stock, and it was necessary to have it
		16	signed by the estate so that a transfer agent could transfer
		17	the stock, and he had gotten this done.
S. S.		18	Q I show you Government's Exhibit 1-E for identi-
7		19	fication, transfer records dated November 6, 1969. Can
		20	you identify that as a transfer record of the company?
		21	A Yes, sir, I can.
		22	Q Does the third page bear your signature?
		23	A Yes, sir, it does.
		24	MR. WALKER: I offer it, your Honor. It is

three or four exhibits, and I will offer all of them at

once.

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Q I show you Government's Exhibit 1-F for identification.

Can you identify that as a transfer record of the company?

A Yes, sir, I can.

THE COURT: Can't you do it in one question?

Are they all transfer records?

Q Are all of these transfer records and do they all bear your signature?

A They are all transfer records, yes.

Q 1-E is dated November 6, 1-F is dated November

A Yes, sir.

Q -- and 1-G is dated November 7? Is that : :

A Yes, sir.

MR. WALKER: I offer them.

MR. DOYLE: May I have an opportunity to confer with co-counsel on this?

THE COURT: I will take them subject to a motion to strike. That will give you an opportunity to confer.

(Government's Exhibits 1-E, 1-F and 1-G were received in evidence.)

1	ms	Acton-direct	122
2	Q	I show you 1-B also.	
3		Is that a transfer record of the company?	
4	A	Yes, sir, that is a transfer record.	
5	Q	Does that contain the signature of Mike Clegg	?
6	A	Yes.	
7	Q	Can you identify the signature?	-
8	A	Yes.	
9		MR. WALKER: I offer that document also.	
10		THE COURT: Same ruling.	
11		(Government's Exhibit 1-B was received in	
12	evide	ence.)	
13	Q	Now, directing your attention to 1-E of the	
14	transfer	record which you have identified, does that refl	lect
15		ace of 5000 shares to Tony Scardino on November	
16	1969?		
17	A	Yes, sir.	
18	Q	Does it reflect the fact that it was put in hi	s
19	name?		
20	ν Α	Yes, sir.	
21	Q	Did you obtain that certificate at that time?	
22	Α.	Yes, sir.	
23	Q	What did you do with it?	
24	A	I gave it to Mr. Scardino.	
25	Q	At that time, sir, did you have a conversation	

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1	ms Acton-direct 123
2	with Mr. Scardino when you gave him the certificate?
3	A Either when I gave it to him or before I picked
4	it up.
5	Q At about the same time?
6	A Yes, sir.
7	Q What was the conversation?
8	MR. DOYLE: Who was present?
9	Q Just with Mr. Scardino?
10	A Yes.
11	THE COURT: You will be able to send a bill at
12	the end to Mr. Walker for tuition. Please.
13	Q Was anyone else present?
14	A Not that I recall, sir.
15	Q Where was the conversation?
16	A In Reno.
17	Q What was said?
18	A I said, "Here is the stock certificate that you
19	said you could borrow some money on."
20	He told me that he had to take the certificate
21	to Tucson.
22	Q How were matters left? Was anything further
23	said?
24	A He was going to get back in touch with me as
25	soon as he got the loan arranged in Tucson.

1	ms Acton-direct 124
2	Q Now, sir, referring to Exhibits 1-E and 1-F,
3	does 1-E reflect an issuance of 5000 shares in the name
4	of Francine Zahl, a thousand shares in the name of Francine
5	Zahl and another 4000 shares?
6	A Yes.
7	Q On November 5, 1969?
8	A Yes.
9	Q Does Exhibit 1-F reflect the issuance of 50,000
10	shares in the name of Francine Zahl?
11	A Yes, sir.
12	Q Now, sir, what did you do following the receipt
13	of 55,000 shares issued in the name of Francine Zahl?
14	What did you do with that stock?
15	A I took it into New York City.
16	Q When did you take it?
17	A With in a day or two from the time we picked it
18	up, as I recall.
19	Q How did you deliver it to New York?
20	A In a hat-type box.
21	Q Where did you deliver it in New York?
22	A To Mr. Segal's office.
23	Q Was anyone with you?
24	A No, sir.
25	Q When you got to Mr. Segal's office in New York

who was present?

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4 people I didn't know.

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office?

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6 room?

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A Not that I remember, sir.

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Q Do you remember any of their names?

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A In Mr. Segal's office?

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Q Yes.

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A No, sir.

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Q Did you have a conversation at that time in the

Francine Zahl, Mr. Segal and several other

Do you see any of the other people in the court-

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A With Mr. Segal, yes, sir.

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Q What was said?

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A He said, "Here is the stock. I told you I would bring it."

17 18

I said, "Here is the stock that I agreed to bring."

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Q Did you have any conversation, any further conversation either there or anyone else on that day with Mr. Segal concerning any other matters connected with Pioneer?

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A I'm sure we discussed Pioneer, but I cannot say specifically what was said, except we needed money.

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of November was a Friday, did you hear from Mr. Scardino?

A Yes, sir, I either heard from Mr. Scardino directly or Mr. Clegg talked to Mr. Scardino. I'm not certain wh ich.

Q What did you learn?

MR. DOYLE: Objection. If he can't identify whom he had the conversation with I think it is objectionable.

THE COURT: Sustained.

Q Did you have any conversations with Scardino during that weekend?

A I either talked to Mr. Scardino or Mr. Clegg.
What I learned was that Mr. Scardino --

MR. PAPE: Objection, your Honor.

THE COURT: Overruled.

A (Continuing) What I learned is Mr. Scardino was not able to get the loan when he took the stock certificate to Tucson on Friday because the man wasn't there or something, but he thought it would be set up the 1st of the next week.

Q Now, following that weekend did you have a subsequent conversation with Scardino or Clegg?

A Yes, sir.

Q What was said?

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MR. DOYLE: May we find out who was present, when and where?

It would have been a telephone conversation the best of my recollection.

It was with Mr. Scardino, I think, that Mr. Scardino was in Houston, I was in Los Angeles.

THE COURT: When was it?

THE WITNESS: It would have been Monday or Tuesday the following weekend when I got back.

What was the conversation?

The conversation was that the loan was still going to be made, but I had to give my permission to complete. Mr. McKibbon took the stock certificate back to Tucson to get the loan, which he did.

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Q And did you subsequently receive the stock certificate of 5,000 shares that had been issued in the name of Mr. Scardino back from Mr. Scardino?

A No, sir, I don't think I picked it up. He left it in Reno. I was in Los Angeles, but he left it there with someone, I forget now whom, and asked me, left it there for me to pick up, said it's all right to give to Mr. McKibbon to take to Tucson to borrow the money on.

Q Who is Mr. McKibbon?

A He was a man that worked for Mr. Scardino in the Riverside Hotel.

Q Directing your attention to November 12th, were you back in Reno on or about that day?

A Yes, sir.

- Q Did you receive a check on that occasion?
- A Yes, sir, I did, from Mr. McKibbon.
- Q I show you Government Exhibit 23D for identification and ask if you can identify it.
  - A Yes, sir, I can.
  - Q What is it?
  - A It is a cashier's check payable to me for \$13,000.

    MR. WALKER: I offer it.
  - Q Is this the check that you received on that day?
  - A Yes, sir.

## Acton-direct

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MR. WALKER: I offer it.

MR. DOYLE: No objection.

(Government's Exhibit 23D received in evidence.)

- Did you have any conversation with anyone concerning why the check should be made out in the amount of \$13,000? Yes or no.
  - A Yes, sir.
  - 0 Who?
  - Mr. McKibbon. A
  - Q And where?
  - A In Reno.
  - Q What was said?

MR. DOYLE: Who else was present?

THE WITNESS: No one that I recall.

And what was said on that score? Q

I told him that was approximately the amount of money we needed to cover the checks that we had drawn against the check that we had deposited in the account, the \$20,000 check we had deposited in the mining account that Mr. Segal had given us; we needed approximately 13,000 to cover the checks that we had written against it.

Now, towards the end of that week, sir, did you have a conversation with Mr. Clegg alone in which he said, told you about conversations that he had had with Mr. Segal?

1	jkh3 Acton-direct
2	A Yes, sir, I did.
3	Q Where was that conversation?
4	A In Los Angeles.
5	O Can you tell us, sir, what was said on that
6	occasion, by you and Mr. Clegg?
7	A Mr. Clegg told me that he had talked to Mr. Sega:
8	and he believed that stock that we had put up for a loan
9	had been sold.
10	Q Did he say anything further about what Segal
11	had said to him?
12	A He told him to find out if it had been sold.
13	We had given our word not to sell the stock and if we were
14	selling the stock, we shouldn't be.
15	Ω And following that conversation what did you do?
16	A I called Mr. Scardino in Houston and asked him
17	if the stock had been sold and he said he was sure it had
18	not.
19	Q What did you do then?
20	A I talked back to Mr. Clegg and told him, and
21	he informed me that he felt that it had been sold, so
22	we flew to Houston, Mr. Clegg and I.
23	Q "We" meaning who?
21	A Mike Clegg and myself.
25	Q What did you do when you got to Houston?

	JA268 132
1	jkh4 Acton-direct
2	A We met with Mr. Scardino, and I asked him if
3	the stock had, in fact, been sold. He said no, he was
4	sure it had not.
5	Q Where was that conversation?
6	A In Houston, in Mr. Scardino's office. I don't
7	recall the address.
8	Q Who do you recall being present?
9	A Mr. Scardino, Mr. Clegg and myself.
10	MR. PAPE: Your Honor, could we have what date
11	that took place?
12	THE COURT: Please, Mr. Walker, when, where, who,
13	what.
14	MR. WALKER: Yes, sir.
15	O Do you recall the date, sir?
16	A No, sir, I do not.
17	Q Was it following the receipt of your check for
18	\$13,000?
19	A Yes.
20	MR. DOYLE: Objection to the leading, your Honor.
21	THE COURT: Sustained.
22	and carned.

Yes, sir, it was following that --

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MR. DOYLE: Your Honor, may the witness be instructed not to answer?

MR. WALKER: When the court sustains an objection,

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Acton-direct

you don't answer.

Q What is your best recollection, sir, as to when that conversation occurred?

A Probably within a week after we received that check.

Q And would you tell us now what was said?

A We went to Mr. Scardino's office. I asked him if that stock had been sold. He said he was sure it hadn't but he would make a phone call to make sure it hadn't. He called someone and told me, "Burney, it has not been sold."

Q Did you have any further conversations with Mr. Scardino on that day?

A Yes, sir, we did discuss the possibility of borrowing more money --

MR. DOYLE: Is this a different conversation or a continuation of the same one?

- Q Is this at the same conversation you had with him?
- A At the same time period, yes, sir.
- Q It was you and Clegg and Scardino?
- A Yes, sir.
- Q What was said?
- A Well, we talked briefly about -- we were all sure that the stock had not been sold. We did need more

1	jkh6	Acton-direct 134
2	money to	proceed with the mining operation. I asked Mr.
3	Scardino	if he could use the same source to borrow more
4	money, ar	nd he said he felt sure that he could, he'd find out
5	Ω	I show you Government Exhibit 1H for identifica-
6	tion and	11 for identification. Can you identify those?
7	A	Yes, sir, they are transfer records
8	Q	Are they both dated November 14, 1969?
9	A	Yes, sir.
		MR. WALKER: I offer them.

THE COURT: Received.

(Government's Exhibits 1-H and 1-I received in evidence.)

MR. GREENBERG: May that be subject to motion before your Honor?

THE COURT: Yes.

MR. GREENBERG: Thank you.

Referring to 1-H, does that reflect an issuance of 6,000 shares to Tony Scardino on November 14, 1969?

A Yes, sir.

Does it also reflect a 1,000-share issuance to Catherine Price?

Yes, sir.

Was this 7,000 shares issued out of the block of stock of 100 which originally was in the name of Van Der Steen!

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## Acton-direct

A Yes, sir.

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does that reflect a 16,000-share block being placed in the name of Jay Walker?

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A Yes, sir.

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Q Was that also out of the block of the Van Der Steen stock?

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A Yes, sir.

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Q What did you do with the 6,00-share certificate?

Referring to Government's Exhibit 1-I in evidence,

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A I caused it to be turned over to Mr. McKibbon or Mr. Scarding.

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O Do you recall whether you delivered it directly or gave it to somebody else to deliver?

14

A No, sir, I do not recall.

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Q Shortly after you had given Mr. Scardino this stock, did you have a further conversation --

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MR. PAPE: Objection, your Honor. That is assuming something not in evidence. He said he gave it to Mr. McKibbon.

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THE COURT: Sustained.

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Q Did you have a conversation, sir, following the delivery of that stock with Mr. Scardino?

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A Yes, sir, I did.

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0 What was that conversation?

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What did you say and what did he say?

THE WITNESS: I told Mr. Scardino I had the stock

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THE COURT: Yes. I just want to make perfectly clear, if it goes to foundation or competence, in other words, something that could be corrected while the witness is on the stand, no.

MR. DOYLE: Yes, I understand, your Honor.

meetings, I am sure I could tell which meeting it was, if

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1	jkh Acton-direct 140
2	I can see the minutes of the meeting or something.
3	MR. WALKER: May I show the witness?
4	THE COURT: Do you remember who was there?
5	THE WITNESS: We had a meeting of
6	THE COURT: Please. I didn't ask you whether
7	you had a meeting.
8	THE WITNESS: No, sir.
9	THE COURT: I asked you if you remembered who
10	was there.
11	THE WITNESS: If I saw the minutes of the meeting
12	I would, sir. No, I don't.
13	THE COURT: All right. Now you can show it to him.
14	Lay a foundation.
15	MR. WALKER: Very well, your Honor.
16	Q I show you Government Exhibit 9 for identification.
17	Can you identify that?
18	A Yes. We had a board of directors' meeting in
19	Reno; Sheldon Lamb, Michael Clegg, Don Ross, myself were
20	there.
21	MR. WALKER: Your Honor, this has been turned over.
23	I offer this document, Government Exhibit 9.
24	MR. DOYLE: May we have the same ruling, your Honor?
25	THE COURT Yes.
	(Government's Exhibit 9 received in evidence.)

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MR. WALKER: I offer it.

jkh Acton-direct 142	
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Honor?	
THE COURT: Yes.	
(Government's Exhibit 1-M received in evi	dence.)
Q Sir, prior to December 3, 1969, had any s	ales
resulted from any activity in connection with the m	ercury
mine?	
A No, sir.	
MR. DOYLE: I object to the form of that	
question.	
THE COURT: Overruled.	
Q Was there any production, commercial produ	ction
at that mine prior to December 3, 1969?	
A No, sir.	
Q Following December 3, 1969, were there and	y sales,
commercial sales as a result of any mining operation	ns
at that mine?	
A No, sir.	
Q Was the mine ever in commercial production	n?
A No, sir.	
Ω Now I direct your attention to the end of	
December and ask you if you recall a further meeting	g of
which Don Shepherd was present?	
	MR. DOWLE: May we have the same ruling, yo  Honor?  THE COURT: Yes.  (Government's Exhibit 1-M received in evi  Q Sir, prior to December 3, 1969, had any s resulted from any activity in connection with the m mine?  A No, sir.  MR. DOYLE: I object to the form of that question.  THE COURT: Overruled.  Q Was there any production, commercial product at that mine prior to December 3, 1969?  A No, sir.  Q Following December 3, 1969, were there any commercial sales as a result of any mining operation at that mine?  A No, sir.  Q Was the mine ever in commercial production A No, sir.  Q Now I direct your attention to the end of December and ask you if you recall a further meeting Picacer Development Corporation at the end of December

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A Yes, sir.

Q Would you tell us what happened at that meeting and can you tell us the date? Can you tell us the date?

MR. DOYLE: May we first have who else was present and when and where?

MR. WALKER: Very well.

- Q Can we have the date? Can you give us the date?
- A It was the end of December, around December the 23rd, I believe. That was when we had --
  - Q Who was present?
- A Mr. Shepherd, Michael Clegg, myself and probably—
  I'm not certain after that. I know that they were present.
  - Q Were there minutes kept of that meeting?
  - A Yes, sir.
- Q I show you Government Exhibit 10 and 10A for identification and ask you if you can identify these documents.
- A Yes, sir. It was December the 30th. Yes, sir, I cm. These were minutes where we agreed to take Pioneer Casualty Company's debentures for stock.

MR. WALKER: I offer Government Exhibit 10 and 10A for identification in evidence.

MR. DOYLE: May we have the same ruling, your Honor?
THE COURT: Yes.

XX

(Government's Exhibits 10 and 10A received in evidence.)

- Q Sir, would you tell the court and jury what the transaction was that was agreed on on December 30, 1969?
- A Yes, sir. Mr. Shepherd controlled Pioneer
  Casualty Insurance Company in San Antonio, Texas. We agreed
  to transfer him some stock, lettered stock in Pioneer
  Development Corporation for \$600,000 worth of Pioneer
  Casualty debentures.
- Q And is a copy of the debenture attached to the minutes that were received in evidence?
  - A Yes, sir.
- Q And was the amount of shares that was being transferred by Pioneer, 200,000 shares, restricted stock?
  - A Yes, as I recall it, yes, sir.
- O Did you have any discussion at that time with Mr. Shepherd, Mr. Clegg, at that meeting, as to what purpose you were going to use these debentures for?
- A Yes, sir, I did. We were to use the debentures
  to raise money for Pioneer. Mr. Shepherd also furnished
  us his financial statement, that he would personally guarantee
  repayment of any loans that we could get on those debentures.
- Q Were you ever able to raise money using these debentures for Pioneer?

Did you have these conversations?

1	jkh		Acton-dir	ect		146	5	
2	А	I had som	ne convers	ations w	ith Mr.	Clegg,	yes,	sir
3	Q	And appro	oximately	how long	before	Christ	mas	
4	in 1969 d	id you hav	re those c	onversat	ions?			
5	А	Within a f	few days b	efore Ch	ristmas.			
6	Q	What was	the conve	rsation	that you	had w	ith M	r.
7	Clegg on	that occas	sion?					
8		MR. DOYL	E: Was any	body else	e presen	t?		
9	Ö	Was anyon	ne else pr	esent?				
10	А	No, sir,	not that	I recall	•			
11		MR. DOYLI	E: Where w	as the c	onversat	ion?		
12		THE WITN	ESS: It wo	ould eith	er have	been a	t	
13	my home,	his home	or on the	telephon	e, and p	orobab1	y all	
14	three. We	had seve	ral conver	sations	about it	. Mr	. Cle	gg
15	said that	Mr. Sega	1 said tha	at the st	ock was	still	comin	g
16	in from t	he west,	had been s	sold in t	he west			
17		THE COUR	T: Mr. Wa	lker, wou	ld you p	please	remem	ber
18	each of t	these, to	fix the t	ime, the	people p	present	, wha	it
19	was said	and where	it happen	ned, so w	e don't	have t	hese	
20	constant	interrupt	ions with	it?				
21		MR. WALK	ER: I und	erstand,	your Ho	nor.		
22		THE COUR	T: It is	a simple	rule.			
23		MR. WALK	ER: Yes,	your Hono	or.			
24		THE COUR	RT: And yo	u should	follow	it.		

MR. WALKER: Yes, your Honor, sure.

				JA283			
т3	am	1	ms	Acton-direct			147
		2	BY MR. W	ALKER:			
		3	Q	This particular conversa	tion that you	're	
		4	talking a	about now, you have said wa	s between you	and C	legg
	!	5	alone?	Is that correct?			
		6	A	Yes, sir, as I recall it	:.		
		7	Q	A few days before Christ	cmas?		
		8	A	Yes.			
		9	Ú	Was it one conversation	or more than	one co	nvers
	1	0.	tion?				
	1	1	A	More than one conversati	ion.		
	1	2	Q	Do you remember specific	cally what was	said	in
	. 1	3	each con	versation or do you remembe	er all togethe	er?	
	1	4	A	I do not remember each	specifically.	In e	each
	1	5	conversa	tion we talked about the fa	act that he ha	id been	ı
	1	6	talking	about Mr. Segal and a lot o	of stock was h	eing s	sold
	1	7	in the W	est.			
	1	8	Q	Was anything further sa	id by Mr. Cle	gg on t	hat
	1	9	subject	that you can recall now?			
	2	0	A	No, sir.			
	2	1	Q	Directing your attention	n, sir, to the	e perio	bd
	2	22	between	Christmas and New Years, d	id you receive	a vis	sit
	2	23	from an	individual?			

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Yes, sir.

What time of day was it?

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## Acton-direct

ms As I recall, early afternoon. A 2 Could you be more specific as to what date it 3 was between Christmas and New Years? 4 No, sir. It was probably right in the middle. 5 Can you identify that individual? Q 6 Yes, sir. 7 A Who is it? 8 Q Mr. Zuber. 9 A Will you point him out? 10 Q The heavy young man in the blue coat. A 11 MR. WALKER: May the record reflect the identi-12 fication. 13 Had you seen Mr. Zuber before this time? 14 Yes, sir. A 15 Where? Q 16 In the Los Angeles area. A 17 On that particular occasion, between Christmas 18 and New Year's, was anyone with him when you first saw him? 19 I don't recall anyone was with him when I first 20 saw him, but someone was with him, yes, sir. 21 Tell us what happened? 22 Q Mr. Zuber said --23 A What was the conversation? 0 24

The conversation was at the door of my house in

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- Was anyone else present? 0
- No, sir. A
  - What did Mr. Zuber say?
  - Mr. Zuber said that "We got to get the stock situation straightened out. We have to go to a meeting and get it straightened out."
    - Did he say anything further?
    - "Let's go to the meeting." A
    - What did you do? 0
    - I went with him. A
    - How were you dressed at that time? Q
- MR. KIRSCHNER: I object as to relevance. 14
- THE COURT: Overruled. 15
- What did you do then? 16
  - We got in Mr. Zuber's car and he told me that the meeting was going to be in Reno.
    - Who was in the car? Q
  - Mr. Howard and Mr. Zuber and myself. A
    - Do you see Mr. Howard in the courtroom? Q
- Yes, sir. 22 A
- Where is he? Point him out. 23 0
- The man with the gray check coat at the end. 24 A
- Was anyone else present in the car? 25

When you left your home in Los Angeles where

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1	ms Acton-direct
2	MR. KIRSCHNER: I object to that, your Honor.
3	THE COURT: I don't know that it is relevant.
4	Will you come up, please.
5	(At the side bar.)
6	THE COURT: How is this relevant?
7	MR. WALKER: He is traveling in shirt sleeves
8	and left his wife without telling her where he was going;
9	he was afraid; these two gentlemen came in and, in effect,
10	absconded with him to take to Reno.
11	THE COURT: What does this have to do with this
12	case?
13	MR. WALKER: This dispute involves the dis-
14	tribution of the proceeds of the stock that was sold.
15	THE COURT: That may have something to do with
6	it. But does the intimation of force or duress have
17	anything to do with this?
8	MR. WALKER: It is an allegation of the indict-
9	ment that one of the means that was used to put the con-
20	spiracy together was of coercion or threats of force by
1	Howard and Zuber, and that is the relevance.

THE COURT: I will allow it.

(In open court.)

Q When you left Los Angeles where was your wife, sir?

1	ms	Acton-direct	153
2	A	She was in the house, in the backyard.	
3	Q	When you left with Mr. Zuber to get in the	car,
4	did you to	ell your wife that you had gone?	
5	A	No, sir.	
6	Q	After you got to Reno Airport and you made	your
7	telephone	call to Mr. Lamb, where did you go, sir?	
8	A	Holiday Inn.	
9	Q	Whom did you go with?	
10	A	Mr. Zuber and Mr. Howard.	
11	Q	When you got to the Holiday Inn what did you	u do?
12	A	I called Mr. Clegg and told him where I was	
13	Q	Prior to making the call to Mr. Clegg did y	ou
14	have a co	onversation with Mr. Howard and Mr. Zuber?	oid
15	you speak	to them?	
16	A	I'm sure I did. I asked them if it was a	all .
17	right if	I called Mr. Clegg.	
18	Q	When you talked to Mr. Clegg, where was Mr	
19	Clegg?		
20	A	In Los Angeles.	
21	Q	What was the conversation that you had?	
22	A	I just told him I was there in Reno, to ca	11
			CONTRACTOR OF THE PARTY OF THE

Shirley, to call my wife and tell her that I was there and I would be back as soon as I could, I was trying to straighten out the stock situation.

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1	JA290 ms Acton-direct 154
2	IIIS IIIGON GEOGRAPHICA
	Q What happened following that telephone call?
3	A We went up to a room in Holiday Inn, stayed in .
4	the room 20, 30 minutes.
5	Q Who was there?
6	A Mr. Zuber, Mr. Howard and myself.
7	Q Then what happened?
8	A Then I told them that Mr. Lamb should be there
9	by now with my coat, let's go down to the bar and meet
10	him. We went down the bar, met Mr. Lamb, got my coat.
11	Mr. Lamb stayed with us.
12	Q Now, following that, a short time thereafter,
13	did you return to the room?
14	A Yes, sir, we did.
15	Q Do you know whose room that was?
16	A No, sir, I don't know whose room.
17	Q Who was present in the room when you got there?
18	A We all went up together, Mr. Zuber, Mr. Howard,
19	myself, Mr. Scardino, Mr. McKibbon.
20	Q Do you recall any other individuals who were
21	present?
22	A Mr. Glaizer, I think. I think there were one
23	or two other people. I don't remember.

O I want you to be very careful and tell us exactly what was said by whom as best you can recall it, the order

stock, but he would repay the money.

- Q Did Zuber say anything following that?
- A He said that he wanted it straightened out, wanted the money; he wanted the stock that had been sold. Mr. Scardino said the money that he had gotten he would certainly repay.
  - Q And what did you do following that?
- A I left the room as soon as I possibly could.

  Mr. Lamb had waited down in the bar. I went down to join

  Mr. Lamb in the bar.
  - Q Do you recall any conversation at the bar?
- A Yes, sir, Mr. Lamb and I were talking, and Mr. Scardino, all of them came back down. Tony or Mr. Scardino told me that he would some way or other get the money back that he had borrowed, and Mr. McKibbon expected him to pay a large sum for Mr. Glaizer, or whoever it was, and he said he was not paying any of that money because he didn't ask for protection, didn't want it.
  - O Who is Mr. Glaizer?
- A He was the one that Mr. McKibbon had brought in.

  MR. KIRSCHNER: Objection. It calls for a

  conclusion.
- MR. PAPE: Can we have who said who was not paying to whom?

THE COURT: Yes. I will sustain the objection.

It does call for a conclusion.

Q Tell us again the full conversation for the benefit of Mr. Pape at that bar? Who said what to whom?

A Mr. Scardino said to me that he would pay back the money that he got, being the \$7500, but he wasn't paying the money Mr. McKibbon had paid to Mr. Glaizer for protection because he didn't want any protection, didn't ask for any.

- Q What did you do following that conversation?
- A We had two or three drinks at the bar and left.
- Q During the first week in January of 1970 did you have any further meetings with Mr. Zuber and Mr. Howard?
  - A Yes, sir.
- Q Will you tell us, sir, who was present at the first such meeting?

A I don't recall exactly where the meeting took place, but we did meet. I met with Mr. Zuber and Mr. Howard in the Los Angeles area.

Q Do you recall the conversation that you had at that meeting?

A Yes, sir. Mr. Zuber and Mr. Howard both told me that they thought they could help me raise money for Pioneer if I could come to New York.

Q Was there any conversation as to what could be

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done in New York?

A They thought by using the debenture bonds that we had and other stock that we could raise money.

Q Was any other individual mentioned in these conversations?

A That could help us raise money?

o Yes.

A I'm sure there was a name mentioned. I don't recall. They did have connections with whom I could sit down and try and raise money.

Q Directing your attention to January 7th or 8th, did you come to New York?

A Yes, sir.

Q What did you bring with you when you came to New York?

A I brought the debentures or some of the debentures, Mr. Shepherd's financil statement, all of the stock of Pioneer Development that we had, everything that we could raise money on that we had.

Q Whom did you meet when you got to New York?

A Mr. Howard.

Q Do you recall any conversations with Mr. Howard on that occasion?

A That he had some appointments tentatively set up.

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,		Acton-direct	159
1	ms		
2		MR. DOYLE: Excuse me. I couldn't hear.	
3		THE WITNESS: He had some appointments tent	atively
4	set up, to	go sit down and try to raise money on these	
5	debentures	and stocks.	
6	Q	What did you do then thereafter in the next	few
7	days?		
8	A	The next few days we had many meetings with	1
9	various pe	ople trying to raise money on the stock and	
10	debentures		
11	Q	Directing your attention to January 9th or	10th
12	or thereal	oouts did you meet an individual by the name	of
13	Allen Gran	nt?	
14	A	Yes, sir.	
15	Q	Will you tell us, sir, what happened in co	n-
16	nection w	ith that incident?	
17	A	We met Mr. Grant.	
18	Q	Who is "we"? You got to tell us who wa	s
19	present.		
20	A	Mr. Howard	
21		THE COURT: You have to ask him.	
22		MR. WALKER: Very well, your Honor.	
23	Q	Who was present?	
24	A	Nr. Howard, Mr. Zuber and I went to Mr. G	rant's

office late in the evening.

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## Acton-direct

- Q Who was present in the office?
- A Mr. Grant and other people I don't know.
  - Q Do you recall the conversation at that time?
  - A Yes, sir. He said that we could trade some of the stock for fur coats. We gave Mr. Grant a real good deal on the stock. He would not sell it. He signed a letter he would not sell the stock.
    - Ω How much stock was given to him?
    - A 6900 shares.
  - O Do you recall what was obtained in return for that stock?
    - A I received three fur coats.
    - Q What did you do with those fur coats?
    - A I sent them back to Los Angeles.
    - Q Whom did you give them to?
  - A One to Mr. Shepherd, one to Mike Clegg, one I kept myself for a while.
  - Q Following that meeting with Mr. Grant did you return to Los Angeles yourself?
    - A Yes, sir.
  - Q Did anything happen in connection with Pioneer between January 11 and March 14 or thereabouts of 1970?
    - A Not very much that I recall happening.
    - Q Directing your attention, sir, to March 14, 1970,

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them.

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MR. DOYLE: Yes, I have seen them and I have a

MR. WALKER: Yes, defense counsel have seen

1	ms	Acton-direct	164
2	Q A	and 600,000 shares of stock was issued for	
3	Precise Pow	er earlier?	
4	A Y	es, sir.	
5	. Q N	low, did any of these items result in any re	venu
6	coming into	Pioneer whatsoever?	
7	A N	o, sir.	
8	Q N	Here there substantial expenses during this	whole
9	period of ti	Lme?	
10	A Y	es, sir.	
11	Q V	Then you left Pioneer were debts owed by Pio	neer
12	A 3	es, sir.	
13	Q I	oid you have any accounting statements certified	ified
14	for Pioneer?		
15	A 1	No, sir.	
16	Q I	Had you pled guilty in this cas?	
17	A !	des, sir.	
18	Q I	Have you pled guilty to Counts 1 and 2 of the	ne
19	indictment?		
20	Α '	Yes, sir.	
21	Ď,	Are you awaiting sentence at this time?	
22	Α .	Yes, sir.	
23	Q	Do you know at this time, do you have any i	dea
24	what your s	entence will be?	
25	A :	No, sir.	

